





RELIGIOUS ENDOWMENTS

IN

CANADA.

The Clergy Reserve and Rectory Questions.

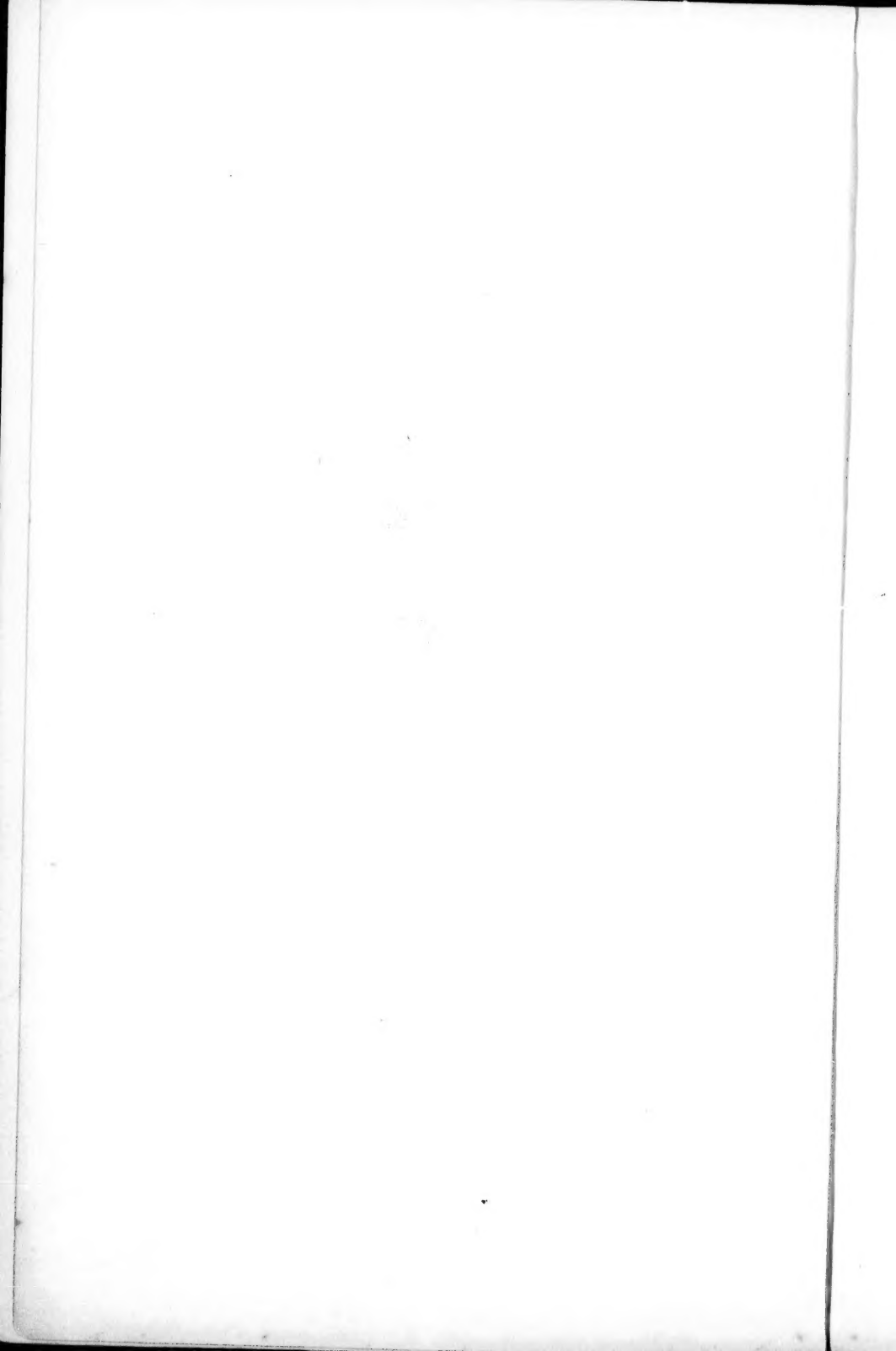
A CHAPTER OF CANADIAN HISTORY.

BY

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RELIGIOUS ENDOWMENTS IN CANADA.

It will be the aim of the author to submit to the British public as concisely as possible, a statement of facts in relation to Religious Endowments in Canada, and to the settlement of the Clergy Reserve and Rectory questions by the Canadian Parliament. It is now rather more than a century since Canada, then containing a population of about 65,000 people, professing the Roman Catholic faith, was ceded by France to England. The treaty was dated February 10th, 1763, and a proclamation was issued on 7th October following, announcing that the Governors had been authorized by Letters Patent, to summon and call general assemblies in the same form as in other North American Colonies. No Imperial Legislation took place until 1774, when the Act 14 Geo. III. cap. 83, was passed. For the "perfect security and ease of His Majesty's subjects professing the religion of the Church of Rome," it was provided that the Clergy of the Church of Rome should be entitled to all their accustomed dues and rights with respect to such persons only as professed that religion, and that out of the rest of the said accustomed dues and rights it should be lawful for His Majesty, his heirs and successors, to make such provision, as he or they should from time to time think necessary or expedient, for the

encouragement of the Protestant religion, and for the maintenance and support of a Protestant Clergy. It was evidently contemplated by the framers of the Act referred to, that the Protestant Clergy should be supported as the Roman Catholic Clergy are to this day, by tithes and dues exacted from their own flocks, and against which there has been as yet no remonstrance on the part of the Roman Catholics of Lower Canada. By the same Act a Council was constituted, but with powers much less ample, than are now entrusted to the Legislative Councils of Crown Colonies. At that period Upper Canada was a wilderness, but after the close of the American revolutionary war, the adherents of the British Crown began to flock to it, encouraged by promises of grants of land to themselves, and their descendants. The new settlers were chiefly Protestants, and when the time arrived for conceding self-government to the colonists, it was deemed expedient by Mr. Pitt to divide the old Province of Quebec into two Provinces, Lower and Upper Canada. Accordingly an Act was passed 31 Geo. III. cap. 31, formerly known as the Constitutional Act. The clauses of this Act relating to the support of religion are those from sec. 35 to 42 inclusive. Sec. 35 was a re-enactment of the provisions of 14 Geo. III. cap. 83, regarding all dues, and rights, and it was long held and probably correctly, that under it tithes might have been levied in Upper Canada. No attempt to do

so was ever made, but it was deemed advisable by the Legislature of Upper Canada to pass a declaratory act on the subject in the year 1823. Sec. 36 authorized a reservation of land, equal in value to one-seventh of all land disposed of by grant or sale to settlers, for the maintenance and support of a Protestant Clergy. The other sections authorized the erection and endowment of Rectories, and gave power to the Provincial Legislature about to be created "to vary or repeal" all these provisions.

Long before a grievance was felt on religious grounds, there was general dissatisfaction among the colonists, at the obstruction to settlement presented by the reservation. Those at all acquainted with the settlement of a new country, destitute of the means of communication, must be aware of the magnitude of the grievance inflicted by these reserves. For a long time there was no authority to sell the Clergy Reserves, and the original idea seems to have been to create a tenantry in each township which was eventually to be constituted a parish. A Clergy Corporation was established with power to grant leases, and for some years this system was followed.

How far the leasing system proved successful may be gathered from the evidence given to the Committee of the House of Commons in 1828, by Mr. James Stephen, then legal adviser to the Colonial Office. Mr. Stephen, referring to Lower Canada, states the revenue from Clergy Reserves to be nominally £930 per annum, and the actual

receipts on an average of three years £50. It need hardly be stated that these leases caused almost universal dissatisfaction. The formidable political agitation which for many years disturbed the peace of Upper Canada, originated in the publication of a letter, dated 16th May, 1827, addressed to Mr. Under Secretary Wilmot Horton, by the Rev. Dr. Strachan, Archdeacon of York, and who was afterwards Bishop of Toronto. Dr. Strachan enclosed to Mr. Horton, for the information of Lord Goderich, what he termed an "Ecclesiastical Chart" of the province of Upper Canada. The object of the Archdeacon's letter was to support a Bill then before Parliament, to authorize the sale of a portion of the reserves. Dr. Strachan stated the following reasons, among others, which had prevented the success of the leasing-system.—"3. The preference given by colonists to lands in fee-simple, to leases, even where the latter are more advantageous."* "4. The difficulty of collecting rents from the smallness of the amount charged on each lot, and from being scattered over the whole Province." "5. So long as applicants can get lands of the best quality, and in the most convenient situations, for nothing, or a mere trifle, the natural consequence is that rent of lands upon lease is almost nominal."

There was much in Dr. Strachan's letter and

* The meaning, it may be presumed, is, where the situations were more advantageous.

Chart that was deemed offensive to the members of other denominations, and on its publication it was not only taken up by the House of Assembly of Upper Canada, but by the inhabitants, who entrusted a petition signed by 8000 people, to Mr. George Ryerson, an influential Wesleyan Methodist, who was examined before the Committee of the House of Commons of 1828. The report of that Committee, of which Mr. Huskisson was Chairman, and Mr. Stanley, (now Earl of Derby,) Mr. Labouchere, (now Lord Taunton,) Mr. Franklin Lewis, Mr. Sturges Bourne, Sir James McIntosh, and others, members, was "That they cannot avoid recommending in the strongest manner the propriety of securing for the future, any provision which may be deemed necessary for the religious wants of the community in these Provinces, by other means than by a reservation of one-seventh of the land, according to the enactment of the Act of 1791."

With regard to the doubts which had arisen as to the meaning of the term "Protestant Clergy," the Committee observe, "the law officers of the Crown have given an opinion in favour of the rights of the Church of Scotland to such participation, in which your Committee entirely concur, but the question has also been raised, whether the Clergy of every denomination of Christians, except Roman Catholics, may not be included." While abstaining from offering any opinion on the legal

definition of the term, the Committee declared its opinion that the intention of the framers of the Act was "to reserve to the Government the right to apply the money, if they so saw fit, to any Protestant Clergy."

During the twelve years which intervened between the report of the Committee of 1828, and the union of Upper and Lower Canada, the Clergy Reserve question was the main ground of agitation, and it may safely be affirmed that the repeated rejection by the Legislative Council of Bills, passed by the House of Assembly for the settlement of the question, was the chief cause of the demand for "responsible Government." It is worthy of note that from the period of the report of the Committee of 1828, the responsible advisers of the Crown in England, seem to have been desirous of complying with the clearly expressed wishes of the Canadian people. It would occupy too much space to enter into much detail, but it will be found that an address of the Legislative Assembly of Canada adopted in 1850, contains a narrative of the events which occurred during the period referred to. This address will be referred to later. Lord Goderich's attempt to settle the question in 1831 deserves especial notice. In his despatches dated in November, 1831, his Lordship not only declared the entire concurrence of Her Majesty's Government in the views of the Assembly, but sent to Lieutenant-Governor Sir John

Colborne a draft message, and draft bill, which latter he suggested should be introduced by the Attorney General. Sir John Colborne obeyed his instructions, but a day or two after the introduction of the Bill, prorogued Parliament. The principle of the Bill was to put an end to all future reservations and to re-invest the land already set apart in the Crown, discharged of all trusts. This Bill would in all probability have been accepted by the Liberal party as a satisfactory settlement of the question. This was fully three years before the time when Sir John Colborne established 44 rectories and endowed them with a portion of the Clergy Reserves. Lord Glenelg was equally unsuccessful in his efforts to settle the question. Lord Sydenham had to deal with it under most embarrassing circumstances. The unfortunate rebellion of 1837 had for a time almost annihilated the Reform party, which only began to revive on the appointment of Lord Durham as Governor General and High Commissioner. On the publication of his Lordship's report it received an immense accession of strength. In that report Lord Durham declared that the Assembly of Upper Canada did not possess public confidence. It had been elected in 1836 for the usual term of four years, which would have expired about the middle of 1840. Lord Sydenham's object was to obtain the consent of the local legislatures to the Union Act with as little delay as possible. It was for some time be-

lieved with confidence by the Reformers that there would be an early dissolution of Parliament, and the Lower Canada newspapers announced that such was likely to be Lord Sydenham's policy. It is to be inferred that, during a visit paid to the Governor-General in Montreal by the Lieutenant-Governor of Upper Canada, he received an assurance that he would find the House of Assembly sufficiently pliant. He did not dissolve; and as a Bill for re-investing the Clergy Reserves in the Imperial Parliament, passed in the preceding session, had been disallowed by the Crown, he determined to make every effort possible to settle it prior to the Union. Unfortunately, no Bill that would have been acceptable to the people of Upper Canada, no Bill similar to that proposed several years previously by Lord Goderich, no Bill at all in accordance with Lord Durham's recommendations, would have been assented to, either by the Assembly or Legislative Council of Upper Canada. Lord Sydenham succeeded in carrying a Bill for dividing the Endowment, the details of which need not be noticed. The Reformers consoled themselves under their defeat by the reflection that a Tory Parliament and Council had ignored the claims long persistently maintained by the Church of England to the whole endowment. When Lord Sydenham's Bill reached England, it was deemed expedient by Lord John Russell to obtain the opinion of the Judges on certain points. This

opinion deserves attention, as it was the basis of the Imperial Act of 1840. It was as follows:—

(Delivered by the Lord Chief Justice of the Court of Common Pleas.)

My Lords,—On the part of her Majesty's Judges, I have the honour to represent to your Lordships, that all the Judges of England, with the exception of Lord Denman and Lord Abinger, have met together in Serjeant's Inn, for the purpose of taking into consideration the several questions which your Lordships have been pleased to propose to us; and that after discussion upon the subject, and deliberation, we have agreed, unanimously, upon the answers to be returned to those several questions, as follows:—

In answer to the first Question, we are all of opinion that the words "a Protestant Clergy" in the statute 31 Geo. 3, c. 31, are large enough to include, and that they do include, other clergy than those of the Church of England, and Protestant Bishops, Priests, and Deacons, who have received Episcopal ordination.

For those words, which are first to be met with in the Statute 14 Geo. 3, c. 83 (recited in the Act now under consideration), appear to us, both in their natural force and meaning, and still more from the context of the clauses in which they are found, to be there used to designate and intend a Clergy opposed in doctrine and discipline to the Clergy of the Church of Rome, and rather to aim at the encouragement of the Protestant Religion in opposition to the Romish Church, than to point exclusively to Clergy of the Church of England. And although the Legislature, in passing the Statute 31 Geo. 3, appears to have had in its view the establishment of the Church of England, primarily, and in a more especial and immediate manner, as is evident from this, that the only detailed provisions for carrying the object of the Act into effect are confined to the erection and endowment of Parsonages and Rectories according to the Establishment of the Church of England, the presenting thereto Incumbents or Ministers of the Church of England duly ordained according to the rites of the said Church, and the subjecting of them to all spiritual and ecclesiastical jurisdiction

and authority, according to the laws and canons of the Church of England which are lawfully made and received in England (sections 38, 39, 40, of the said Act); yet does it appear to us, that the Legislature, by employing the more general and comprehensive term "Protestant Clergy" in the same Statute in which they also use the expression "Incumbents or Ministers of the Church of England," must be intended to have included within the former and larger expression other Clergy beside those who are comprised within the limit of the latter.

And when your Lordships desire the Judges to state, if any other Clergy are included, what other? we answer, that it appears to us that the Clergy of the Established Church of Scotland do constitute one instance of such other Protestant Clergy.

For by the Act of Union of the two kingdoms of England and Scotland, it is made a fundamental article of such Union, "that the true Protestant Religion as then professed within the kingdom of Scotland, with the worship, discipline, and government of the Church, should be effectually and unalterably secured within the kingdom of Scotland." And when a subsequent Act of the British Legislature, relating to the government, laws, and religion of a British colony, acquired by conquest since the Union, and forming part of the dominions of the British Crown, employs, with reference to that colony, the terms "a Protestant Clergy," there being no words in the Statute which necessarily restrain and limit the meaning of the expression, we think it must be held to include the Clergy of the Protestant Church established in Scotland; and we feel ourselves confirmed in this opinion by observing, that on several occasions the precise expression is to be found in the Statute Book, "the Clergy of the Established Church of Scotland." The 48 Geo. 3, c. 138, in its very title mentions "the Clergy of Scotland." In the 50 Geo. 3, c. 84, "the Rights and Interests of the Clergy of Scotland" are repeatedly spoken of; and in the 5 Geo. 4, c. 72, s. 7, a reference will be found to several Acts of Parliament which make mention of the "Poor Clergy of the Established Church of Scotland."

And although in answering your Lordships' question we spe-

cify no other Church than the Protestant Church of Scotland, we do not thereby intend that besides that Church the Ministers of other Churches may not be included under the term "Protestant Clergy." At the same time, as we do not find on the Statute Book the acknowledgment by the Legislature of any other Clergy answering that description, and as we are not furnished by your Lordships with any information as to the doctrine or discipline of any other denominations of Protestants to which the Statute of the 31 Geo. 3 can by possibility apply, we are unable to specify any other to your Lordships as falling within the Statute.

My Lords,—In answer to the Question secondly put to us, we are all of opinion that the effect of the 41st section of the Statute is prospective only, and that the power thereby given to the Legislative Council and Assembly of either of the Provinces cannot be extended to affect lands which have been already allotted and appropriated under former grants; for the manifest import of the 41st section appears to us to be limited to this, namely, "the varying or repealing the provisions respecting the allotment and appropriation of lands," and not to comprehend "the varying or repealing allotments or appropriations which have been already made under provisions of the Act, whilst such provisions continued unrepealed and in full force." The provisions of the Statute of Wills might be varied or repealed without affecting the devises of land already made under it.

My Lords,—In answer to the Question lastly proposed, we all agree in the opinion that the Legislative Council and Assembly of the Province of Upper Canada have exceeded their authority in passing the Act "to provide for the Sale of the Clergy Reserves, and for the distribution of the Proceeds thereof," in respect of both the enactments specified in your Lordships' Question. As to the enactment "that it should be lawful for the Governor, by and with the advice of the Executive Council, to sell, alienate, and convey in fee simple all or any of the Clergy Reserves," we have, in answer to the second Question, already stated our opinion to be such, as that it is inconsistent with any such power in the Colonial Legislature; and as to the enactment "that the proceeds of all past

sales of such Reserves, which have been or may be invested under the authority of the Act of the Imperial Parliament passed in the 7 & 8 Geo. 4, for authorizing the sale of part of the Clergy Reserves in the Provinces of Upper and Lower Canada, shall be subject to such orders and directions as the Governor in Council shall make and establish for investing in any Securities within the Province of Upper Canada the amount now funded in England, together with the proceeds hereafter to be received from the Sales of all or any of the said Reserves," we think such an enactment is in its terms inconsistent with and contradictory to the provisions of the Statute of the Imperial Parliament 7 & 8 Geo. 4, and therefore void, there being no express authority reserved by that Act to the Colonial Legislature to repeal the provisions of such latter Statute.

The Imperial Clergy Reserve Act was passed in the same Session as the Union Act, and a variety of circumstances caused a temporary cessation from agitation on the subject in Upper Canada.

Having arrived at the settlement of the question by the Imperial Parliament in 1840, it may be convenient to advert here to the establishment of the Rectories. Sir John Colborne had been appointed Lieutenant-Governor of Upper Canada in the year 1828, and might reasonably have expected his successor at any time after the latter end of 1834. Sir Francis Head was selected to succeed him in November, 1835, and reached Toronto on the 23rd of January, 1836. It appears from his "Narrative" that his immediate departure after his appointment was urgently pressed by Lord Glenelg. Sir John Colborne had been in possession for years of the views of Her Majesty's Government on the subject of the Clergy Reserves, and yet without any authority

beyond what was conveyed in a despatch from Earl Bathurst to Sir Peregrine Maitland, dated 22nd July, 1825, he signed patents for the endowment of a number of Rectories at the very time when his successor was on his journey from New York to Toronto. As a proof of the haste in which this measure was carried out, it may be observed that the minute of the Lieutenant-Governor in Council was dated 15th January, 1836, that Sir Francis Head arrived on the 23rd, and that it appears from a letter of the Bishop of Toronto to the Duke of Newcastle, dated 19th March, 1853, that only 44 of the 57 Rectories were actually established. The Bishop says: "Besides the
 "Clergy Reserves, Lord Seaton, towards the close
 "of 1835 and beginning of 1836, while Governor
 "of Upper Canada, established 57 Rectories for the
 "benefit of the Church, but of these only 44 were
 "completed before his departure. They were
 "endowed with lands amounting in all to 17,268
 "acres, giving an average of about 400 acres to
 "each Rectory—13, which, from some accidental
 "cause, were found without Lord Seaton's signature
 "after his resignation of the Government, and which
 "the proper authorities both here and in England
 "have refused to complete, are held void, so that
 "the legal Rectories are only 44 instead of 57."

It will appear from the documents which follow that no report of the erection or endowment of these Rectories was made to the Secretary of State.

*Copy of a despatch from Lord GLENELG to Sir F. B. HEAD,
K.C.H., Lieutenant Governor of Upper Canada.*

Downing-street, 31st August, 1836.

Sir,—Among the Documents appended to the Report of the Committee of the House of Assembly of Upper Canada, to whom was referred your Correspondence with your late Executive Council, is a Schedule of the Patents for Land granted as Endowments to the Church of England in that Province, and a Return of Property ceded by certain Parties in exchange for Endowments. The incomplete manner in which these Returns are drawn up renders it impossible to discover the Date of the greater Portion of the Transactions to which they refer; but it would appear from the Heading of one of the Returns, that several Rectories have been endowed during the current Year; although, I presume, before your Assumption of the Government of Upper Canada. As this is a Subject of considerable importance, and as it has attracted the Notice of the Public, both in this Country and in the Province, I have to request that you will supply me with an Explanation of the Returns to which I have alluded; specifying the Dates at which the several Endowments were conceded, and, as far as possible, the Grounds of the respective Grants.

I need not, I am sure, point out to you, that, pending the Settlement of the Clergy Reserve Question, it is indispensable that no further Allotment of Church Lands should take place, without the express Sanction of His Majesty's Government. I have, &c.

(Signed) GLENELG.

Copy of a Despatch from Sir F. B. HEAD, K.C.H., Lieutenant Governor of Upper Canada, to Lord GLENELG.

Toronto, Upper Canada, 17th December, 1836.

My Lord,—In compliance with the Directions contained in your Lordship's Despatch No. 92, I have the Honour to transmit herewith Documents showing the Number and Nature of the Endowments to the Church of England which were made by my Predecessor.

Your Lordship will perceive that the Patents of these Endowments are all dated after my Arrival at New York, and

while I was on my Journey to Toronto; and though I have never mentioned the Circumstance before, I will not now withhold from your Lordship, that the Feeling which the Endowment of these Rectories created throughout the Province was one of the many difficulties I had to contend against during the late Elections.—I have, &c.

(Signed)

F. B. HEAD.

MORNING COURIER.

Montreal, Friday, 17th February, 1837.*

A most animated Debate took place in the Upper Canada Assembly on the 9th instant, on the Report of the Select Committee to whom the Petitions respecting the Rectories, from several Presbyterian Congregations, had been referred. Mr. McKay, Chairman of the Committee, submitted a Series of Resolutions condemnatory of the recent Establishment of Rectories in the Province, but proving not quite palatable to the House, they were rejected by a small majority. They went the Length of abolishing the Rectories already established. In lieu of them, the following, proposed by Mr. McLean, were adopted:—

1st. Resolved, That by the Thirty-eighth Clause of the Act 31 Geo. 3. Cap. 31. Power is given to His Majesty to authorize the Governor, Lieutenant Governor, or Person administering the Government of this Province, with the Advice of the Executive Council, to constitute and erect within every Township or Parish One or more Parsonages or Rectories according to the Establishment of the Church of England, and from Time to Time to endow such Parsonage or Rectory with Lauds authorized and required by that Act to be reserved for the Support of a Protestant Clergy.

2d. Resolved, That the Power thus vested in the Person administering the Government and the Executive Council of this Province not having been exercised for a Period of nearly Half a Century, the Inhabitants of the Province had good

* This extract appears in the Parliamentary return as an enclosure to Sir F. B. Head's despatch, but it is not referred to in the despatch itself, and was printed two months later. The error is in the return, but is of no importance.

Reason to believe that no Attempt would be made to carry it into effect, more especially when the Provincial Legislature had been invited to legislate, by the Imperial Government, in relation to the Reserves, from which all Endowments must necessarily be made.

3d. Resolved, That the late Lieutenant Governor, with the Advice of the Executive Council, established certain Rectories under the Power so long suffered, in deference to the public Feeling, to remain dormant.

4th. Resolved, That while this House must unequivocally condemn such a Proceeding, under the peculiar Circumstances of the Province, and pending the Question as to the Disposition of the Clergy Reserves, it regards as inviolable the Rights acquired under the Patents by which Rectories have been endowed, and cannot, therefore, either invite or sanction any Interference with the Rights thus established.

5th. Resolved, That in the Opinion of this House, the Rectors who have been, or who may be established in this Province, cannot and ought not to exercise any Ecclesiastical or Spiritual Power or Authority whatever over any Portion of the People of this Province other than the Members of their respective Congregations.

6th. Resolved, That as an Impression seems to Prevail that Rectors so established are entitled to enjoy and exercise general and exclusive Spiritual and Ecclesiastical Powers, and it is expedient to remove all Grounds of Apprehension on this Head, a humble Address be presented to His Majesty, praying, in earnest and strong, but respectful Terms, that His Majesty will be graciously pleased to convey to the Imperial Parliament the anxious Desire of this House, in behalf of the great Body of the People of the Province, that as the Provincial Parliament are restrained from legislating on the Subject, except under peculiar and embarrassing Circumstances, an Act of the Imperial Parliament may be passed to declare, in plain and explicit Terms, that the Establishment and Endowment of Rectories in this Province shall not be construed to confer any Right to exercise any Ecclesiastical or Spiritual Power whatever except over the Members of the Church of England.

This discussion, which lasted about Ten Hours, was con-

ducted with great Keenness, and every Inch of Ground was vigorously contested by the Friends of "Justice to all."

Executive Council Chamber at Toronto, Friday, 15th
January 1836.

PRESENT,

The Honourable Peter Robinson, Presiding Councillor.

The Honourable George H. Markland.

The Honourable Joseph Wells.

To His Excellency Sir John Colborne, K.C.B., Lieutenant
Governor of the Province of Upper Canada, and
Major General commanding His Majesty's Forces
therein, &c. &c. &c.

May it please your Excellency,

Pursuant to the Views of Lord Goderich, shown by his Despatch of the 5th April 1832, in which he concurs with your Excellency, and expresses his Desire "that a moderate Portion of Land should be assigned in each Township or Parish for ensuring the future Comfort, if not the complete Maintenance of the Rectors," the Council caused the necessary Steps to be taken for the Purpose of setting apart Lots in each Township throughout the Province.

Much Delay has been caused by their Anxiety to avoid interfering with Persons who might have acknowledged Claims to any of the Reserves to be selected either for Lease or Purchase.

A Difficulty in completing what his Lordship most appropriately calls "this salutary Work" was also caused by the Crown Officers not concurring in the Form to be used in the Instrument by which the Endowment is to be confirmed, which left the Council to decide as to the Mode to be adopted for that Purpose.

These Obstacles have now been surmounted, and it is respectfully recommended that no Time be lost in authorizing the Attorney General to prepare the necessary Instruments to secure to the Incumbents named in the annexed Schedules, and their Successors, the Lots of Land there enumerated as having been respectively set apart for Glebes.

All which is respectfully submitted.

(Signed) PETER ROBINSON, P.C.

*Copy of a Despatch from Lord GLENELG to Sir F. B. HEAD,
Bart., Lieutenant Governor of Upper Canada.*

Downing Street, 6th July, 1837.

Sir,—I have received your Despatch, dated the 2d May last, No. 51, enclosing the Copy of an Address to the King, by the Assembly of Delegates, in conjunction with the Established Church of Scotland, and the Copy of an Address from the same Parties to yourself, praying you to transmit to me the Copy of the Address to the King, and to recommend the same to His Majesty's favourable Consideration.

This Address, as you have observed, asserts that the Constitutional Act of the Canadas of the Year 1791 is an infringement of the Rights of the Petitioners; you therefore think it needless to offer any Observations on the Subject. I entirely concur with you in thinking, that, in the Administration of the Government of the Province, neither Her Majesty's confidential Advisers nor you had any proper Concern with the Question, whether the Constitution of 1791 was wisely framed, or consistent with the just Pretensions of each of the Three Kingdoms now constituting the United Kingdom of Great Britain and Ireland. It is sufficient for us to know, that the British Legislature of the United Kingdom is alone capable to repeal or to amend it. The Duty of the Executive Government is simply to execute its Provisions. In this Conclusion you have rested, and there also I should have been inclined to terminate the Discussion, if I had not recently found Cause to suppose that the Act of 1791 has received an erroneous Construction from the Petitioners, as well as from others of deservedly great Authority in the Province. It is important to rescue the Constitution from a Censure and a consequent Unpopularity to which it is not justly obnoxious.

The Petitioners maintain that the Act of 1791 is an Infringement on their Rights, because it provides for the Endowment of Rectories in Canada, and for the Presentation of Ministers of the Church of England as Incumbents, and because it invests those Incumbents with Spiritual Jurisdiction over all Denominations of Christians within the Bounds of their respective Rectories. To show that this alleged Grievance is not merely a theoretical Evil, but a practical Wrong, the Peti-

tioners refer to the Establishment of Fifty-seven Rectories in January 1836. They complain of this Measure as a Departure from the Pledge of the Crown to refer to the Local Parliament the Settlement of the Disputes which had arisen respecting the Clergy Reserves, and declare themselves unwilling to assume that the King would at that Time have instructed His Majesty's Representative to have established those Rectories; they then declare that this Act has tended more than any other Circumstance to diminish the Estimation of the Equity of His Majesty's Government in the Province, and as a Reparation they call upon the King, in substance, to invest the Church of Scotland with Powers co-extensive with those which are enjoyed by the Sister Church of England, but to restrict the Spiritual Authority of both to their own peculiar Members. Without expressing a decided Opinion as to the Nature and Extent of the Spiritual Jurisdiction which would accompany the Creation of any Rectories under the Act of 1791, I trust that the following Explanation of the Measures which I have taken in the Interval which has elapsed since I received your Despatch of the 17th December last, No. 101, upon the Subject of the Fifty-seven Rectories created by an Act of your immediate Predecessor in the Government, will convince the Petitioners of the Church of Scotland that they have to a certain Extent misapprehended the Act of 1791, so far at least as that Statute may be supposed to have authorized the Establishment of the Rectories in question.

You are aware that your Despatch of the 17th December 1836 contained the first official Information which ever reached me of the Rectories having been established or endowed. The Fact had been asserted in Parliament, but I was not only officially uninformed, but really ignorant that it had occurred; I therefore requested you to supply me with the necessary Information, and until it reached me in the Month of February last, I was entirely destitute of all authentic Intelligence as to what had really been done.

You will not, I trust, even for a Moment, suppose that I refer in the Spirit of Censure or Complaint to the Silence of the Provincial Government on this Occasion; it admits of an obvious Explanation. The Creation and Endowment of the

Rectories was almost the last Act of Sir John Colborne's Administration; and as at that Time you were actually on your Way from New York to Toronto, your Predecessor probably assumed that the Proceeding would be reported by you, he having at last, as it may well be imagined, scarcely leisure enough for the Discharge of his many indispensable and urgent public Duties. On the other hand, it is impossible not to respect the Feelings which indisposed you to enter on the Subject. Regretting the Measure itself as creating a new Embarrassment in your Path, at that Time beset by Difficulties of no ordinary Kind and naturally regarding it as irremediable, you preferred to contend with this Obstacle silently rather than to avail yourself of it, either as an Apology in the event of Failure, or as enhancing your own Merit in the event of Success. To this generous Solicitude for the Credit of your immediate Predecessor I have always attributed your Omission to report his Proceeding with regard to the Rectories; and I fully admit, that with the Opinion which you entertained, and could scarcely have failed to entertain, as to the Validity of the Act itself, the Motives for making it a Subject of Correspondence were but few and of no great Weight.

Although, for the Reasons to be subsequently stated, I am compelled to think that the Creation and Endowment of the Rectories were not lawful or valid Measures, yet it would be most foreign to my real Intention if I should be supposed to cast any Doubt on the propriety of Sir John Colborne's Conduct in reference to them. That distinguished Officer has given too many Proofs of his devoted Zeal for His Majesty's Service, and for the Good of the King's Subjects, to permit the Admission of even a surmise injurious to his public Spirit on this or any other Occasion; and although I may differ from him in Opinion as to the Expediency of establishing the Rectories, especially at the Moment chosen for that Purpose, yet I am convinced that Sir John Colborne would as readily as any Man acknowledge that opposite Views of Public Interest, upon any particular Question, may be entertained by Men engaged in the same Branch of His Majesty's Service without derogating in the slightest Degree from their mutual Esteem and Confidence. Indeed, in proportion to the Strength of those Feelings will

usually be the Freedom with which such opposite Views are avowed and discussed.

On receiving your Despatch of the 17th December, it appeared to me very questionable whether any adequate legal Authority existed for the Creation or Endowment of the Rectories. I did not indeed perceive any possible Ground for disputing the Right of the Lieutenant Governor in Council to proceed to that measure, if previously sanctioned by the King; but on referring to the Commissions of Lords Aylmer and Gosford, to the General Instructions accompanying them, to the Correspondence between this Department and the Provincial Government, and to the Minutes of the Executive Council of the 15th January 1836, it appeared to me that no such Sanction had ever been given. The Grounds of this Opinion you will learn from the accompanying Copy of the Communication which I thought it necessary to address to the King's Advocate and to the Attorney and Solicitor General,

The Law Officers of the Crown received that Reference on the 12th April, and reported to me their Answer on the 8th Ultimo. The Delay is readily accounted for by the great Importance of the Question, and by the Anxiety of His Majesty's Legal Advisers to offer no immature Judgment on such an Occasion. I enclose for your Information a Copy of their Report. You will find that they declare their Opinion to be, that the Erection and Endowment of the Fifty-seven Rectories by Sir J. Colborne are not valid and lawful Acts.

I confess myself to be much embarrassed by this Decision; it imposes upon Her Majesty's Government a Duty which is for many Reasons exceedingly irksome. The Demands of the Members of the Church of Scotland would forbid a silent Acquiescence in what has been done, even if such Inaction were otherwise compatible with the Obligations of the Office which I have the Honour to hold; yet I feel that by acting on the Advice of the Law Officers of the Crown in this Instance I shall inevitably appear to be assuming an Attitude of Opposition to the interests of the Church of England. I can, however, only pursue the straight Path which lies before me; trusting that if I shall not at first escape Misconstruction, I shall ultimately be acquitted by the Parties more immediately

concerned of any Failure in the Affection and Veneration for the Church of England which should characterize every sincere Member of her Communion.

It is of course possible that the Statement on which the Law Officers of the Crown have founded their Opinion may be erroneous or defective, although it is certain that the utmost Care and Labour have been bestowed on the Investigation of the Facts of the Case. It is also possible that Her Majesty's Legal Advisers may have misapprehended the Law, although it is equally clear that they have bestowed their most patient and laborious Attention on the Questions proposed to them. But adverting to each of these possible Sources of Error, my first Solicitude is to ascertain whether any such Mistake has really occurred. You will therefore have the goodness to communicate a Copy of this Despatch to the Archdeacon of Toronto, who will probably think it right to lay it before the Bishop of Montreal, who is now officiating as Bishop of the Diocese of Quebec; and you will invite his Lordship and the Archdeacon to inform you whether they are aware of any material Fact omitted in the Case laid before the Crown Lawyers, or inaccurately stated there, or of any important Argument which may be supposed to have escaped the Notice of those Learned Persons. If any such Error or Oversight shall appear to you to have been committed, you will suspend all further proceedings until you shall have reported on the Case to me, and shall have received my further Instructions.

If no such Error shall be pointed out by the Bishop or the Archdeacon, or shall occur to yourself, you will then consult with them as to the Method by which the Question of Law can be brought to an Adjudication with the least Delay, Inconvenience, and Expense, and with the least Danger of placing the Local Government in the invidious Position of being engaged in an open Controversy with the Church of England in the Province. I trust that some Method will be found of obtaining the Judgment of the Court of Queen's Bench in a Form which will exclude the Supposition of any unfriendly Feeling on either Side. On this Subject you will, of course, act under the Guidance of your Legal Advisers. It matters little what may be the Shape of the Litigation, if it shall avoid every Sem-

blance of Hostility, and shall be such as to bring the Question of Law fully to Adjudication in such a Manner as will enable either Party to bring the Cause by Appeal under the Review of the Judicial Committee of the Privy Council.

I have assumed that the Bishop and the Archdeacon would not think themselves at liberty to surrender the Rights, apparently vested in the Church of England, in deference to the Opinion of Her Majesty's Legal Advisers, and without the previous Judgment of the proper Legal Tribunals. I must go further, and avow my Opinion that such a Surrender is neither to be asked nor desired. Her Majesty's Government repose indeed in the Law Officers the Confidence to which their high professional Reputation gives them so just a Title; but I am persuaded that it would be more satisfactory to those Learned Persons themselves, as it would be far more agreeable to me and my Colleagues, that Claims of such peculiar Delicacy and Importance should be decided, not on the Responsibility only of the Judgment of The Queen's Advocate and the Attorney and Solicitor General, but on that of the proper Tribunals, after a full Investigation of all the Facts of the Case, and of all the Principles of Law bearing upon them.

On such Subjects as the present little Advantage is gained, while much Inconvenience is incurred by Concealment. The Public at large are so deeply interested in the Result that they are entitled to know the Progress of the Discussion, when no positive Injury can arise from the Disclosure; you have therefore my Authority to communicate this Despatch or any Passages of it which you may think it not inconvenient to communicate to the Petitioners of the Church of Scotland, as the Answer to their Application. They will perceive that their Request for the Grant of certain peculiar Advantages to their own Church proceeds on an Assumption the Accuracy of which is yet to be decided,—the Assumption, namely, that the Church of England has acquired a valid and lawful Title to the Endowments made in her Favour in January 1836, and to the Spiritual Jurisdiction which is supposed to be incident to those Endowments.

I have, &c.

(Signed) GLENELG.

First Enclosure in No. 4.

(Copy.)

Downing Street, 12th April, 1837.

Sir,—The Statute 31 Geo. 3. c. 31, s.38, enables His Majesty to authorize the respective Governors of Lower Canada and of Upper Canada, with the Advice of the Executive Council, to constitute within each Township or Parish a Parsonage or Rectory according to the Establishment of the Church of England, and to endow every such Parsonage or Rectory with so much of the Clergy Reserves as the Governor, with the Advice of the Council, shall judge to be expedient, under the then existing Circumstances of such Township or Parish.

The Governor's Commission, dated the 6th of July 1835, following in this respect the ancient and established Form, authorises the Governor, or in his Absence the Lieutenant Governor, with the Advice of the Executive Council, to erect Parsonages in each Township or Parish according to the Establishment of the Church of England, and to endow any such Parsonage or Rectory with any Part of the Clergy Reserves, "subject nevertheless" (to quote the precise Words of the Commission) "to such Instructions touching the Premises as shall or may be given you by Us under Our Signet and Sign Manual, or by Our Order in Our Privy Council, or through one of Our Principal Secretaries of State."

Thus the Authority which His Majesty was enabled by Parliament to impart to the Governor was, in fact, so imparted to him, subject to the King's further Instructions.

From the Date of the Statute 31st Geo. 3. until the Year 1835 the Power of constituting and erecting Parsonages or Rectories was never exercised in Upper Canada; but at the Close of that Year it was called into exercise by the then Lieutenant Governor Sir John Colborne. The Intention to adopt this Measure was not communicated by Sir John Colborne to His Majesty's Government, nor was the Measure itself ever reported by that Officer, having been taken immediately before his Resignation of the Government into the Hands of his successor Sir Francis Head. The total Number of Rectories thus established appears to have been Fifty-seven.

Having recently received from Sir Francis Head a Report on the Subject, enclosing the Minutes of the Executive Council of Upper Canada of the 15th January 1836, I enclose a Copy of those Minutes. You will perceive from them that the Council founded their Recommendation of this Measure on a Despatch from Lord Goderich of the 5th April 1832, from which they quote One Passage. That Passage, however, is not accurately described. Lord Goderich is represented in the Minutes as expressing the Desire "that a moderate Portion of Land should be assigned in each Township or Parish for ensuring the future Comfort, if not the complete Maintenance of the Rectors." On referring to the Despatch itself it appears that it expressed his Lordship's Opinion that the greatest Benefit to the Church of England would be derived from applying a Portion at least of the Funds under the Control of the Executive Government "in preparing, as far as may be practicable, for profitable Occupation, that moderate Portion of Land which you (Sir J. C.) propose to assign in each Parish for increasing the future Comfort if not the complete Maintenance of the Rectors." The Distinction between the Earl of Ripon's Language and the Terms in which it is thus quoted is important. It conveys no Signification of His Majesty's Pleasure, nor indeed any Instruction, respecting the Erection of Parsonages and Rectories, nor even with regard to the Grant of Land for the Maintenance of the Clergy. The main Subject of the Passage is the Application of certain Funds in preparing for profitable Occupation certain Lands, and those Lands are indicated merely by a passing Reference to some Intention entertained and announced by Sir J. Colborne. The Records of this Office contain no Despatch from Sir J. Colborne in which any Allusion is made to the Subject. It may therefore be inferred that Sir J. Colborne's Intentions were made known to Lord Ripon through some private and unofficial Channel.

The Council however appear to have understood Lord Ripon's Expressions as such an Intimation of the King's Pleasure as would justify the Erection and Endowment of Fifty-seven Rectories. That the words were not designed by his Lordship to be so understood may with some Confidence be inferred from

the following circumstance :—The Statute 31 Geo. 3. sec. 36 to 40 enables the Provincial Legislature, on certain Conditions, to repeal so much of that Act as relates to the Clergy Reserves. On the 21st of November 1831, that is, Six Months before the Date of the Despatch to which Reference is made by the Executive Council, Lord Ripon addressed to Sir J. Colborne a Despatch, in which the Provincial Legislature were invited to exercise this Power, and he expressly recommended that the Repeal should embrace all the Clauses in question, amongst which are included those which relate to the Erection and Endowment of Rectories. The Despatch of the 5th of April 1832, was marked "Confidential;" and it would seem impossible that Lord Ripon could have designed, by such a Communication, to convey to the Lieutenant Governor the King's Sanction for neutralizing to a considerable Extent the Effect of that Repeal which Five Months before his Lordship had recommended in a Public Despatch.

I enclose for your perusal Copies of the Two Despatches of the 21st November 1831, and of the 5th April 1832.

The Questions which I would propose for your Consideration are the following :

First, Adverting to the Terms of the Statute 31 Geo. 3d. Cap. 31, sec. 36 to 40, and to the Terms of the Royal Commission, could the Lieutenant Governor, with the Advice of the Executive Council, lawfully constitute and erect or endow any Parsonage or Rectory within the Province without the further Signification of His Majesty's Pleasure ?

Secondly, Can Lord Ripon's Despatch of 5th April 1832 be regarded as signifying His Majesty's Pleasure for the Erection of Parsonages, or for the Endowment of them, or for either of those Purposes ?

Thirdly, Are the Erection and the Endowment of the Fifty-seven Rectories by Sir J. Colborne valid and lawful Acts ?

Fourthly, If the preceding Questions be answered in the Affirmative, have the Rectors of the Parishes so erected and endowed the same Ecclesiastical Authority within their respective Limits as are vested in the Rector of a Parish in England, or within what other Bounds is that Authority restricted ?

You will have the goodness to consider these Questions in consultation with the King's Advocate and Mr. Solicitor-General, and report to me your and their joint Opinion upon them.—I have, &c.

(Signed) GLENELG.

The Attorney General,
&c. &c. &c.

Doctors Commons, 8th June 1837.

My Lord,—We are honoured with your Lordship's Letter of the 12th of April, stating that the Statute 31 Geo. 3. c. 31. s. 38. enables His Majesty to authorize the respective Governors of Upper Canada and of Lower Canada, with the Advice of the Executive Council, to constitute within each Township or Parish a Parsonage or Rectory, according to the Establishment of the Church of England, and to endow every such Parsonage or Rectory with so much of the Clergy Reserves as the Governors, with the Advice of the Council, shall judge to be expedient under the then existing Circumstances of such Township or Parish.

That the Governor's Commission, dated the 6th July 1835, following in this respect the ancient and established Form, authorizes the Governor, or in his Absence the Lieutenant Governor, with the Advice of the Executive Council, to erect Parsonages in each Township or Parish according to the Establishment of the Church of England, and to endow any such Parsonage or Rectory with any Part of the Clergy Reserves, "subject nevertheless (quoting the precise Words of the Commission) to such Instructions touching the Premises as shall "or may be given you by Us, under Our Signet and Sign Manual, or by Our Order in Our Privy Council, or through "One of Our Principal Secretaries of State."

Thus the Authority which His Majesty was enabled by Parliament to impart to the Governor was in fact so imparted to him, subject to the King's further Instructions.

That from the Date of the Statute 21 Geo. 3. until the Year 1835, the Power of consolidating and erecting Parsonages or Rectories was never exercised in Upper Canada; but that at

the Close of that Year it was called into exercise by the then Lieutenant Governor Sir John Colborne. That the Intention to adopt this Measure was not communicated by Sir John Colborne to His Majesty's Government, nor was the Measure itself ever reported by that Officer, having been taken immediately before his Resignation of the Government into the Hands of his Successor, Sir F. Head.

That the total Number of Rectories thus established appears to have been Fifty-seven.

That having recently received from Sir F. Head a Report on the Subject, enclosing the Minutes of the Executive Council of Upper Canada of 15th January 1836, your Lordship encloses a Copy of those Minutes.

That we shall perceive from them that the Council founded their Recommendation of this Measure on a Despatch from Lord Goderich of the 5th April 1832, from which they quote one Passage; that Passage, however, is not accurately described. That Lord Goderich is represented in the Minutes as expressing his Desire "that a moderate Portion of Land should be assigned in such Township or Parish for ensuring the future comfort if not the comfortable Maintenance of the Rectors."

That, on referring to the Despatch itself, it appears that it expressed his Lordship's Opinion that the greatest Benefit to the Church of England would be derived from applying a Portion at least of the Funds under the Control of the Executive Government "in preparing, as far as may be practicable for profitable Occupation, that moderate Portion of Land which you (Sir J. Colborne) propose to assign in each Parish for increasing the future Comfort, if not the complete Maintenance of the Rectors." The Distinction between the Earl of Ripon's Language and the Terms in which it is thus quoted is important. It conveys no Signification of His Majesty's Pleasure, nor indeed any Instruction respecting the Erection of Parsonages and Rectories, nor even with regard to the Grant of Land for the Maintenance of the Clergy. The main Subject of the Passage is the Application of certain Funds in preparing for profitable Occupation certain Lands, and those Lands are indicated merely by a passing Reference to some Intention en-

tertained and announced by Sir J. Colborne. That the Records of the Colonial Office contain no Despatch from Sir J. Colborne, in which any Allusion is made to the Subject. It may therefore be inferred that Sir J. Colborne's Intentions were made known to Lord Ripon through some private and unofficial Channel.

The Council, however, appear to have understood Lord Ripon's Expression as such an Intimation of the King's Pleasure as would justify the Erection and Endowment of Fifty-seven Rectories. That the Words were not designed by his Lordship to be so understood may, with some Confidence, be inferred from the following Circumstances:—The Statute 31 Geo. 3. s. 36. to 40, enables the Provincial Legislature, on certain Conditions, to repeal so much of that Act as relates to the Clergy Reserves: On the 21st of November 1831, that is, Six Months before the Date of the Despatch to which reference is made by the Executive Council, Lord Ripon addressed to Sir J. Colborne a Despatch, in which the Provincial Legislature were invited to exercise this Power, and he expressly recommended that the Repeal should embrace all the Clauses in question, amongst which are included those which relate to the Erection and Endowment of Rectories.

That the Despatch of the 5th April 1832 was marked "Confidential," and it would seem impossible that Lord Ripon could have designed by such a Communication to convey to the Lieutenant Governor the King's Sanction for neutralizing, to a considerable Extent, the effect of that Repeal which Five Months before his Lordship had recommended in a public Despatch.

Your Lordship encloses for our Perusal Copies of the Two Despatches of the 21st of November 1831 and of the 5th April 1832.

The Questions which your Lordship is pleased to propose for our Consideration are the following:—

First, Adverting to the Terms of the Statute 31st Geo. 3. Cap. 31. sec. 36 to 40, and to the Terms of the Royal Commission, could the Lieutenant Governor, with the Advice of the Executive Council, lawfully constitute and erect or endow

any Parsonage or Rectory within the Province without the further Signification of His Majesty's Pleasure?

Secondly, Can Lord Ripon's Despatch of the 5th April 1832 be regarded as signifying His Majesty's Pleasure for the Erection of Parsonages, or for the Endowment of them, or for either of those Purposes?

Thirdly, Are the Erection and Endowment of the Fifty-seven Rectories by Sir J. Colborne valid and lawful Acts?

Fourthly, If the preceding Questions be answered in the Affirmative, Have the Rectors of the Parishes so erected and endowed the same Ecclesiastical Authority within their respective Limits as is vested in the Rector of a Parish in England, or within what other Bounds is that Authority restricted?

And your Lordship is pleased to request that we would consider these Questions in consultation, and report to your Lordship our joint Opinion upon them.

In obedience to your Lordship's Commands we have considered the several Questions, and have the Honour to report that, adverting to the Terms of the Statute 31 Geo. 3. Cap. 31. sec. 36 to 40, and to the Terms of the Royal Commission, we are of opinion that the Lieutenant Governor, with the Advice of the Executive Council, could not lawfully constitute and erect or endow any Parsonage or Rectory within the Province without the further Signification of His Majesty's Pleasure.

Secondly, We are of opinion that Lord Ripon's Despatch of the 5th April 1832 cannot be regarded as signifying His Majesty's Pleasure for the Erection of Parsonages, or for the Endowment of them, or for either of those Purposes.

Thirdly, We are of opinion that the Erection and the Endowment of the Fifty-seven Rectories by Sir J. Colborne are not valid and lawful Acts.

We have, &c.

(Signed) J. DODSON.
J. CAMPBELL.
R. M. ROLFE.

The Lord Glenelg,
&c. &c. &c.

'The opinion of the law officers having been referred to Archdeacon Strachan, in accordance with Lord Glenelg's instructions, that Rev. gentleman made an elaborate report, in which he referred to various documents which had not been before the law officers when they gave their opinion. It will be sufficient to direct attention to the despatch of Earl Bathurst of 22nd July, 1825, which is mainly relied on by the law officers as the authority on which they declare, in their amended opinion, dated 24th January, 1838, that the erection and endowment of the rectories were valid and lawful acts.

Downing Street, 22d July 1825.

Sir,—I have received His Majesty's Commands to direct that you do from Time to Time, with the Advice of the Executive Council for the Affairs of the Province of Upper Canada, constitute and erect within every Township or Parish which now is or hereafter may be formed, constituted, or erected within the said Province, One or more Parsonage or Rectory or Parsonages or Rectories according to the Establishment of the Church of England; and that you do from Time to Time, by an Instrument under the Great Seal of the said Province, endow every such Parsonage or Rectory with so much or such Parts of the Land so allotted and appropriated as aforesaid in respect of any Lands within such Township or Parish which shall have been granted subsequently to the Commencement of a certain Act of the Parliament of Great Britain passed in the Thirty-first Year of the Reign of His late Majesty King George the Third, intituled "An Act to repeal certain Parts of an Act passed in the Fourteenth Year of His Majesty's Reign, intituled 'An Act for making more effectual Provision for the Government of the Province of Quebec in North America, and to make further Provision for the Government of the said Province,'" or of such Lands as may have been allotted and appropriated for the same Purpose by or in virtue

of any Instruction which may have been given by His said late Majesty before the Commencement of the said Act, as you shall, with the Advice of the said Executive Council, judge to be expedient under the existing Circumstances of such Township or Parish.

You shall also present to every such Parsonage or Rectory or Incumbent or Minister of the Church of England who shall have been duly ordained according to the Rites of the said Church, and supply from Time to Time such Vacancies as may happen therein.—I have, &c.

Major General (Signed) BATHURST.
Sir Peregrine Maitland, K.C.B.

Doctors Commons, 24th January, 1838.

My Lord,—We are honoured with your Lordship's Commands, signified in your letter of the 19th ultimo, transmitting certain Documents which were referred to us on the 12th of April last on the Subject of the Endowment of certain Rectories in the Province of Upper Canada; also enclosing a Copy of the Report made by us in answer to that Reference, with Copies of a Correspondence which has taken place on the Subject between your Lordship and the Lieutenant Governor of Upper Canada; also enclosing a Copy of the Commission under which the Government of the Province was administered in the month of January, 1836, when the Order of the Lieutenant-Governor in Council respecting those Rectories was made.

Adverting to these various Documents, and especially to the Report of the Archdeacon of Toronto, accompanying Sir F. Head's Despatch of the 18th of October, your Lordship is pleased to request that we would report our joint Opinion, whether the Addition of the material Fact now communicated to us affects the Conclusion which we adopted and reported to your Lordship on the 8th of June, and if so, that we would report the Answer which we would now give to the Questions proposed in your Lordship's Letter of the 12th of April; vizt,

"First. Adverting to the Terms of the Statute 31 Geo. 3, Chap. 41. sec. 36 and 40, and to the Terms of the Royal Commission, could the Lieutenant-Governor, with the Advice

“ of the Executive Council, lawfully constitute and erect or
 “ endow any Parsonage or Rectory within the Province with-
 “ out the further Signification of His Majesty's Pleasure ?

“ Secondly. Can Lord Ripon's Despatch of the 3d of April
 “ 1832 be regarded as signifying His Majesty's Pleasure for
 “ the Erection of Parsonages or for the Endowment of them,
 “ or for either of those Purposes ?

“ Thirdly. Are the Erection and the Endowment of the Fifty-
 “ seven Rectories by Sir J. Colborne valid and lawful Acts ?

“ Fourthly. If the preceding Questions be answered in the
 “ Affirmative, have the Rectors of the Parishes so erected and
 “ endowed the same Ecclesiastical Authority within their
 “ respective Limits as is vested in the Rector of a Parish
 “ in England, or within what other Bounds is that Authority
 “ restricted ?”

In obedience to your Lordship's Commands, we have the Honour to report that, adverting to the various Documents, and especially to the Instructions contained in Lord Bathurst's Despatch to Sir P. Maitland of the 22d July, 1825, referred to in the Report of the Archdeacon of York (Toronto), and also to the Terms of the Royal Commission, the whole of which is now before us, we are of opinion,—

1st. That the Lieutenant Governor, with the Advice of the Executive Council, could lawfully constitute and erect or endow any Parsonage or Rectory within the Province without the further Signification of His Majesty's pleasure.

2d. We are of opinion, that Lord Ripon's Despatch of the 5th of April 1832 cannot be regarded as signifying His Majesty's Pleasure for the Erection of Parsonages, or for the Endowment of them, or for either of those Purposes.

3d. We are of opinion, that the Erection or endowment of the Fifty-seven Rectories by Sir John Colborne are valid and lawful Acts.

4th. We are of opinion, that the Rectors of the Parishes so erected and endowed have the same Ecclesiastical Authority within their respective Limits as is vested in the Rector of a Parish in England.—We have, &c.

The Right Hon. Lord Glenelg,
 &c. &c. &c.

J. DODSON.
 J. CAMPBELL.
 R. M. ROLFE,

The foregoing extracts from despatches and other official documents sufficiently explain the proceedings which were taken in England after the Secretary of State became aware of Sir John Colborne's erection and endowment of the Rectories. It may be well to advert very briefly to the state of feeling in the colony. Shortly after Sir John Colborne's departure a select Committee of the House of Assembly of Upper Canada thus referred to the establishment of Rectories in a report. "It is with difficulty that the Committee suppress the strong feelings of disgust, indignation, and astonishment, which these practices and proceedings of the Government are calculated to excite." When the final opinion of the Law Officers of the Crown, dated 24th January, 1838, reached Upper Canada, an indignant remonstrance was made by the Moderator of the Synod of the Presbyterian Church in Canada, in connexion with the Church of Scotland. The letter of the Rev. Moderator, dated 18th July, 1838, is too long for insertion, but a brief extract will suffice to show the state of feeling which existed in a body which had generally supported the Government.

"A large portion of the people over whom your Excellency holds rule, feel that they have sustained a grievous wrong. Scotchmen and Presbyterians in Canada with deep grief have long seen most important rights—the sacred rights of the Church of their native land—neglected and

"insulted. With feelings painful in no ordinary
 "degree do they now learn that acts are proclaimed
 "as legal which directly violate them. The vene-
 "rable body over whom I have the honour of pre-
 "siding, participating with their countrymen in
 "their settled convictions of the injustice of these
 "proceedings, participating with them in the painful
 "emotions with which they have filled them, have
 "devolved on me the duty of solemnly protesting
 "before your Excellency, before Canada, and the
 "Empire, against their possible legality or va-
 "lidity."

It is only necessary further to observe that the
 views of the Rev. Moderator are in strict accordance
 with the legal opinion subsequently obtained by
 the Colonial Government in 1852, and which was
 signed by Mr. Bethell and Mr. Malins.

In the first session of the Parliament elected
 under the auspices of Sir F. B. Head, when, as Lord
 Durham observed, "he succeeded in putting the
 "question in such a light before the province that
 "a great portion of the people really imagined
 "that they were called upon to decide the question
 "of separation by their votes," the Rectory
 question was taken up, and the House declared
 that "it must unequivocally condemn such a
 "proceeding, under the peculiar circumstances of
 "the province, and pending the question as to the
 "disposition of the Clergy Reserves."

It, however, proceeded to declare that "it

“ regards as inviolable the rights acquired under
 “ the patents by which Rectories have been en-
 “ dowed.” These resolutions were proposed in
 amendment to those reported by a Select Com-
 mittee on the Rectories, which recommended their
 immediate abolition. They were carried by a small
 majority after a discussion which lasted about ten
 hours, and which was conducted with great keen-
 ness. These resolutions were a disposal of the
 Rectory question by the 13th Parliament of Upper
 Canada, the last that sat before the Union. In 1840
 the Imperial Clergy Reserve Act had been passed
 concurrently with the Union Act; and it was hoped,
 and by none more than by the moderate Reformers,
 that the question had been set at rest for ever.
 For the re-agitation of the question, the Bishops
 and Clergy of the Church of England are chiefly,
 if not wholly, responsible. During the first Par-
 liament of United Canada there was no agitation
 on the subject. The rupture between Lord Met-
 calfe and the Ministry, which he found in office on
 his assumption of the Government, arose from a
 difference of opinion on the subject of Responsible
 Government. This ultimately led to a dissolution
 of the first Parliament, and to the return of a small
 majority favourable to the new Ministry. The
 Bishops and Clergy thought that the time had
 arrived to obtain some better terms than those
 secured to them by the Imperial Act of 1840. It
 appears from a despatch addressed to Earl Cath-

cart by Mr. Secretary Gladstone, dated 28th February, 1846, that so early as 28th January, 1844, shortly after he had got rid of his Ministers, Lord Metcalfe proposed, that the Clergy Reserve Lands should be vested in the different religious bodies. Mr. Gladstone pointed out that the Imperial Clergy Reserve Act would have to be amended; a step which he evidently contemplated as possible, and he asked for a good deal of information. His despatch was referred by Earl Cathcart to the Executive Council, and on 6th April, 1846, that body recommended the suspension of all sales of Clergy Reserves; and they further recommended that the price of those lands, which had been valued by appraisers, should be increased from 25 to 125 per cent. Even had there been no question of a favoured Church, these measures would have excited the greatest alarm throughout Upper Canada, but in the first Session of the second Parliament the Bishops had petitioned to obtain the lands for the Church Societies. The petitions were referred to a Select Committee, composed of members favourable to the demands of the Church, as appeared by their report. In the next Session, the Chairman of the Committee, Mr. Solicitor-General Sherwood, proposed an address to the Crown, with a view of procuring a new Act of the Imperial Parliament authorizing a division of the land itself, instead of the income arising from the proceeds, among the religious bodies.

The avowed object was to enable the Church Societies to lease the lands, or to hold them at extravagant prices. The question was not taken up as a Government measure, but the address was moved by the Solicitor-General for Upper Canada, and was supported by the Attorney-General and his other Upper Canada colleagues. To prove how unwilling the Reform leaders were to re-open the question, reference may be made to the speeches of two of them who took part in the debate:—

Mr. Baldwin said, "it was to him a source of
 " the deepest regret that it was found necessary to
 " bring the question under discussion once more
 " before Parliament; he regretted it on account of
 " the Church whose name was associated with it,
 " and of which he was an humble member; he
 " regretted it on account of the province at large,
 " but more especially that part of it which had
 " suffered from former agitation, and which, be-
 " cause of its more extended connexion with the
 " subject, was more susceptible of injurious excite-
 " ment. . . . Such was the diversity of
 " opinion in Upper Canada until at last, and in
 " consequence of the whole weight of the Govern-
 " ment being turned toward it, parties were in-
 " duced to support the Bill of Mr. Draper, which
 " although it was not sanctioned at home, led to a
 " final disposal of the question by the Imperial
 " Parliament. It was known that that settlement
 " did not please all parties in Canada; that some

“ positively refused to recognise it. Now he (Mr. Baldwin) called upon Hon. members to mark his words, that if the question be re-opened former fierce agitation will be resumed, and may end in the total discomfiture of the Church. He would again warn them to that effect. . . . He therefore pressed on both sides of the House to forbear reviving the question; he sincerely deprecated further agitation on either side, and had done all in his power to discourage it among those with whom he usually acted.”

Mr. Price, who was a Congregationalist, and who a few years later moved the address for the repeal of the Imperial Act, after declaring that he thought the Clergy Reserves “ one of the greatest curses that could have been inflicted on the land,” and “ the chief cause of the rebellion,” proceeded thus :—“ That the settlement under Lord Sydenham had been considered final, that peace had succeeded the long and fierce conflict, and the country was settling down in the hope that agitation on that subject was at an end. Although three-fourths of the people believed that the arrangement was made in injustice, and partiality, they quietly submitted as the only means of restoring peace to the land.”

He went on to declare that “ vesting the land in Ecclesiastical bodies, was an infliction that the country could not and would not bear;” and that “ it would finally end in the wresting of the whole

“endowment from the Clergy.” The address of the Solicitor-General was rejected by 37 to 14, and as the numbers were small, it seems probable that a reference to the journals of 1846 would show that a great many Lower Canadian members abstained from voting, especially as Mr. Aylwin, who had been Solicitor-General in Mr. Lafontaine’s administration, spoke in favour of the address.

It may possibly cause surprise that after such a failure on the part of the Bishops and Clergy in such a Parliament, there should have been an immediate demand for a repeal of the Imperial Act. The truth is that the people of Upper Canada had been thoroughly alarmed by the number of petitions presented by the Clergy, who had been systematically at work to procure them. It had been always held that the Imperial Act was unconstitutional. Lord Goderich had himself made a declaration to that effect, and he and Lord Glenelg had refused to entertain recommendations to settle the question by Imperial legislation. Lord John Russell had yielded to the urgent request of Lord Sydenham, made under peculiar circumstances. If, however, the Imperial Act were allowed to remain on the Statute book, no one could tell how soon it might be amended to meet the wishes of the Bishops and Clergy. Mr. Gladstone’s despatch of 28th February, 1846, clearly indicated that an amendment of the Imperial Act would be entertained. Instead of addressing the Canadian Par-

liament, petitions might be sent in any quantity to the Secretary of State, and a new Act of Parliament might be passed before the people of Canada had even heard of its being in contemplation. Whether or not these views were reasonable, it is certain that the agitation commenced in 1844, by the Bishops and Clergy of the Church of England, for the amendment of the Imperial Act of 1840, was the signal for a most determined agitation in Upper Canada, which was manifested by a general demand from the candidates at the next election for pledges on the subject. The 2nd United Parliament was dissolved at the latter end of the year following the agitation of the Bishops; and when the new House met early in 1848, a vote of want of confidence in the Ministry was carried by a large majority. The result was the formation of the 2nd Lafontaine-Baldwin administration. It may be proper to remind English readers that it was found convenient, owing to the quasi-federal character of the Union, to have a recognized leader from each section of the United Province in the Ministry. The individual selected by the Governor to give him advice as to the formation of a Ministry, whether belonging to Upper or Lower Canada, usually sent for some individual from the other section, who recommended the subordinate members of such section. Thus there was a leader from Lower and Upper Canada, and the Ministry was popularly known by the joint names of the leaders.

During the later part of the 2nd Parliament, attempts had been made by the Ministry to amend the Charter of King's College, for which a Royal Charter had been obtained, together with a very large endowment of public lands, which had been reserved by the Crown on an application from the Parliament of Upper Canada, for the education of the youth of the colony in the higher branches of learning, no reference having been made to any particular form of religion. Under the Charter the whole management of the University was in the hands of the Church of England. This question was left as a legacy to the Reform Ministry by that which it displaced.

It had received another legacy of even a more embarrassing character. Both in Upper and Lower Canada there had been considerable payments for what were termed "rebellion losses," and Lord Metcalfe had issued a Commission of Enquiry to ascertain the amount of unsettled claims, and moreover when the Commissioners had enquired how they were to proceed to distinguish between loyalists, and rebels, they had been distinctly told that they were to be guided by the decisions of the Courts of law. On what other evidence men were to be made to undergo some of the penalties of high treason has never been shown. Many in England must recollect the excitement in Canada on the occasion of the Rebellion Losses Bill, during which the Parliament House was

destroyed by fire. One unfortunate consequence of the violence of the British party in Montreal, was the removal of the seat of Government. It was only in the year 1850, during the third session of the third United Parliament that action was taken with reference to the Clergy Reserves. It seems desirable to explain the exact position of parties at this stage of the controversy.

Although the party known as Reformers had acted for some years with a great deal of unanimity, it was nevertheless apparent, that very wide differences of opinion prevailed, and it was easily foreseen by some of the most sagacious politicians that an alliance between the Conservatives of Upper Canada and the French Canadians was more natural than one between the latter and the Upper Canadian Liberals. The French Canadians, as a party, were extremely unwilling to commit themselves on the Clergy Reserve or Rectory questions. It was unfortunate for those who supported the interests of the Church of England that they had not only always kept aloof from the leaders of the French Canadians, but had acted in concert with a very small minority calling itself the British party. In Lower Canada, Mr. Lafontaine himself had a strong Conservative bias, and two of his colleagues, Colonel Taché, afterwards Sir E. P. Taché, and Mr. L. M. Viger fully shared his sentiments.

Colonel Taché, who was less reticent than Mr.

Lafontaine, had stigmatised as "fanatical brawlers" that section of the Reform party of Upper Canada, which about 1850 assumed the appellation of "Clear Grits," a term which is still used to designate the extreme section of the Liberal party. It would probably be difficult to point to any colony where the effect of the secession of the Free Church from the Church of Scotland was more important than in Upper Canada. The adherents of the Church of Scotland, notwithstanding much provocation, and many bitter expressions, had given an effective support to the old Family Compact party in Upper Canada. No section of the population had inveighed more loudly than they had done against the Rectories, but they had been liberally dealt with by the Clergy Reserve Bill, and they were not disposed to enter on fresh agitation. The members of the Free Church on the other hand, threw themselves into the extreme ranks of the opposition, and having a leader of great energy and talent, Mr. George Brown, they became a most influential section of the liberal party. Although a formal rupture between the old Reform party of Upper Canada and the "Clear Grits" took place much later, yet in 1850 and 1851 frequent attempts were made to embarrass the Lafontaine-Baldwin administration. It should therefore be borne in mind that in Upper Canada there were three parties, Conservatives, Reformers, and Clear Grits. In Lower Canada, at a

later period, a party was organized to act with the Clear Grits of Upper Canada. It has been generally known as the "Rouge" party, though it cannot with justice be affirmed that its leaders, or to the author's knowledge, any of its members have ever avowed Socialist opinions. There was likewise a small Conservative party in Lower Canada, which from the period of the Union had been in alliance with the Conservative party in Upper Canada. Such was the state of parties when under a very strong pressure from public opinion, it became necessary for the Lafontaine-Baldwin administration to consider not only the question of Religious Endowments, but that of the Seigniorial Tenure in Lower Canada.

The Clergy Reserve question obviously could not be dealt with by the Canadian Parliament, unless the Imperial Parliament consented to the repeal of the Act passed in 1840. The first step then was to procure that repeal, and accordingly in 1850, resolutions were moved by a member of the Government, Mr. Price, which were to be embodied in an address to the Crown. That address, with the despatch enclosing it from the Earl of Elgin dated 19th January, 1850, will convey a good deal of information on the subject, as the former gives a history of the Clergy Reserve question from the beginning of the controversy.

*Copy of a Despatch from the Right Hon. the Earl of ELGIN
and KINCARDINE to the Right Hon. the Earl GREY.*

Government House, Toronto, July 19, 1850.

MY LORD,—I have the honour to transmit herewith, in compliance with the request of the Legislative Assembly, to to be laid at the foot of the Throne, an Address from that House to Her Majesty, on the subject of the Clergy Reserves. After recapitulating the proceedings of the House of Assembly of Upper Canada before the union of the Provinces in connexion with this question, it concludes with the prayer, that Her Majesty will be graciously pleased to recommend to Parliament a measure for the repeal of the Imperial Act 3 & 4 Vict., chap. 78, and for enabling the Canadian Parliament to dispose of the Clergy Reserves, subject to the condition of securing the stipends or allowances assigned from this fund to the clergy of the Churches of England or Scotland, or to any other religious bodies or denominations of Christians, to the parties now receiving them during their natural lives or incumbencies. It was finally carried by a majority of 46 votes to 23; some of the minority voting against it in consequence of this reservation.

2. It may be proper, however, to observe, that a much closer division took place on the passage of the 29th, in the series of resolutions on which the Address was founded, and which was thus worded: "*Resolved*—That this House is of opinion, that when all the circumstances connected with this question are taken into consideration, no religious denomination can be held to have such vested interest in the revenue derived from the proceeds of the said Clergy Reserves as should prevent further legislation with reference to the disposal of them; but this House is nevertheless of opinion, that the claim of existing incumbents should be treated in the most liberal manner." This resolution was opposed by three classes of persons: First, by those who desire the existing settlement to be maintained. Second, by those who, though they object to the Imperial Act of 1840, and seek its repeal, admit nevertheless certain claims on the part of the Protestant clergy under the Constitutional Act of 1791. And lastly, by those who are unwilling to recognize even the claims of existing incumbents.

It was carried on a division by a majority of 2 only; the numbers being 36 for, and 34 against it.

3. I deeply regret the revival of agitation on this subject, of which Lord Sydenham truly observed, that it had been in Upper Canada the one all-absorbing and engrossing topic of interest, and for years the principal cause of the discontent and disturbance which had arisen, and under which the province had laboured. The intervention of the Imperial Parliament in 1840 was doubtless prompted by a desire to settle on terms which should be equitable and generally satisfactory, a question which had for so many years disturbed the peace of the colony. While the principle, however, of an establishment was abandoned by the Imperial Act 3 & 4 Vict., chap. 78, which admitted all denominations to share in the proceeds of the Clergy Reserves, advantages were given by it to the established Churches of England and Scotland in the distribution of the funds which render them still objects of envy. This feeling has been increased, as regards the Church of Scotland, by the large secession from its ranks, which the Free Church movement has occasioned. I much fear that the result will justify the disinclination which Lord John Russell appears, from the first, to have entertained to any legislation by the Imperial Parliament upon this question. It is an evil of no small magnitude on a subject of this nature, that while the more violent and unscrupulous of the opponents of the existing settlement are enabled to create a prejudice against it, by representing it to be the result of Imperial interference in a matter of provincial concern, its friends are tempted rather to endeavour to influence opinion in England than to resort to measures which may strengthen their position in the colony. I have, &c.

(Signed)

ELGIN AND KINCARDINE.

The Right Hon. The Earl Grey,
&c. &c. &c.

ADDRESS TO HER MAJESTY.

Hon. Mr. Price reported from the Select Committee appointed to draw up an Address to Her Majesty on the subject

of Clergy Reserves, that they had drawn up an Address accordingly, which was read twice, as followeth :—

To the Queen's Most Excellent Majesty.

Most Gracious Sovereign :—We, your Majesty's most dutiful and loyal subjects, the Commons of Canada, in Provincial Parliament assembled, humbly approach your Majesty, for the purpose of representing :—

That the reservation of a large portion of the public domain of the Province, for the support of a Protestant clergy, by an Act passed in the 31st year of the reign of your Majesty's royal predecessor, King George the Third, has been for many years a source of intense dissatisfaction to the great majority of your Majesty's subjects in Upper Canada.

That it appears by the last census taken in Upper Canada, that the population of that section of the province was in the year 1848, 723,332, of which 239,651 are returned as in connexion with the Churches of England and Scotland, the only churches receiving any benefit from the Clergy Reserve endowment.

That it appears by the last census taken in Lower Canada, that the population of that section of the province was in the year 1844, 678,490, of which only 70,229 are returned as in connexion with the Churches of England and Scotland.

That the power given by the 41st clause of the above-mentioned Act to the Provincial Legislature, "to vary or repeal" the provisions respecting the allotment and appropriation of lands for the support of a Protestant clergy, affords sufficient evidence, that in the opinion of the Imperial Parliament the question was one that ought to be settled with reference to the state of public opinion in the colony rather than to that in the mother-country.

That in the early settlement of the Province the reserve lands were of little value, and as no sales had then been authorized by the Imperial Parliament, the question attracted but a slight share of public attention.

That so soon as the intention of the Government to dispose of the land reserved in Upper Canada became known, the representatives of the people of that Province took the whole

subject into their most serious consideration, and with an unanimity that prevailed on no other question, endeavoured to remove a grievance universally complained of by the people, save and except by those interested in the maintenance of Church Establishments.

That in the year 1827 a Bill to authorize the sale of Clergy Reserves and the application of the proceeds thereof to the purposes of General Education, was passed through the House of Assembly of Upper Canada, the division on the second reading having been 22 to 6; that this Bill was rejected by the Legislative Council.

That a dissolution having taken place soon afterwards, the tenth Parliament of Upper Canada met in the year 1829, when a Bill for the sale of the Clergy Reserves and the application of the proceeds to educational purposes, passed through the various stages in the House of Assembly without a division, but was again rejected by the Legislative Council.

That in the year 1830, during the second session of the tenth Parliament, another Bill containing similar provisions to the former ones was passed by the House of Assembly without a division, and was rejected by the Legislative Council.

That a dissolution having taken place, a new Parliament met in the year 1831, when resolutions expressing the same views were adopted by a large majority in the House of Assembly, an amendment proposed by the Solicitor-General having being rejected on a division of 29 to 7.

That in the year 1832, during the second session of the eleventh Parliament, an Address to the Crown praying for the application of the Clergy Reserves to educational purposes was carried by a large majority in the House of Assembly.

That after the passage of the Address last referred to, a message was sent down to the House by Lieutenant-Governor Sir John Colborne, in which his Excellency stated that he had His Majesty's commands to make a communication to the House of Assembly in reference to the lands set apart for the support and maintenance of a Protestant clergy; that his Excellency informed the House that the representations made to His Majesty and to his royal predecessors, of the prejudice sustained by his faithful subjects in the Province, from the ap-

appropriation of the Clergy Reserves, had engaged His Majesty's most attentive consideration, that His Majesty had considered with no less anxiety, how far such an appropriation of territory was conducive either to the temporal welfare of the ministers of religion in the province or to their spiritual influence, and that His Majesty invited the House of Assembly of Upper Canada to consider how the power given to the Provincial Legislature by the Constitutional Act, to vary or repeal this part of its provisions, could be called into exercise most advantageously for the spiritual and temporal interests of His Majesty's faithful subjects in the province.

That after the reception of the above message, a Bill to re-invest the Clergy Reserves in the Crown, discharged of all trusts whatsoever, was introduced and read a second time on a division of 29 to 7.

That in the year 1833, during the third session of the eleventh Parliament, a Bill having similar provisions with that formerly adopted by the House, was read a second time on a division of 26 to 2.

That in the year 1834, during the fourth session of the eleventh Parliament, a Bill of a similar character was passed through its several stages in the House of Assembly by considerable majorities, though opposed with the whole weight of the Government, but was rejected by the Legislative Council.

That in the year 1835, during the first session of the twelfth Parliament of Upper Canada, a Bill for the sale of the Clergy Reserves and the application of the proceeds to educational purposes, was passed by a majority of 40 to 4, but was rejected by the Legislative Council.

That during the same session, resolutions were sent down to the House of Assembly by the Legislative Council, in which the opinion was expressed, that as the Legislature of the province had been unable to concur in any measure respecting the Clergy Reserves, it was expedient to address His Majesty and both Houses of Parliament, requesting that the Imperial Parliament should legislate on the subject.

That the House of Assembly, by a majority of 24 to 12, thereupon resolved, That the House had theretofore repeatedly passed Bills providing for the sale of the Clergy Reserves,

and the appropriation of the moneys arising therefrom to the support of Education, which Bills have been rejected without amendment by the Legislative Council. That with the same view the House had repeatedly made known, by humble and dutiful addresses to His Majesty, their wishes and opinions, and the wishes and opinions of His Majesty's faithful subjects in the province on this highly important subject, and that the House took that opportunity of declaring that these wishes and opinions, both on the part of the House and of their constituents remained entirely unchanged. That during the second session of the then last Parliament, his Excellency the Lieutenant-Governor by Message informed the House that he had received His Majesty's instructions to declare that the representations which had at different times been made to His Majesty and his royal predecessors, of the prejudice sustained by His Majesty's faithful subjects in the province from the appropriation of the Clergy Reserves, had engaged His Majesty's most attentive consideration, and His Majesty had most graciously been pleased to invite the House to consider how the powers given to the Provincial Legislature by the Constitutional Act, to vary or repeal the provisions which it contains for the allotment and appropriation of the Clergy Reserves might be most advantageously exercised for the spiritual and temporal interests of his faithful subjects in the province. That the House, in compliance with His Majesty's wishes thus graciously expressed, and with the strong and well-known desires of His Majesty's faithful subjects in the province, had passed a Bill during the then present session to provide for the sale of the Clergy Reserves, and to apply the money arising from such sales to the support of education. That the said Legislative Council had not passed the said Bill, had not amended it, and had not passed any other Bill on the subject.

That in the year 1836, during the second session of the twelfth Parliament, a Bill embodying similar principles to those repeatedly passed by the House of Assembly was again introduced, and was carried on a division by a majority of 35 to 5. That the said Bill was amended in the Legislative Council by expunging all the enacting clauses, and substituting

provisions for investing the Reserves in the Crown, to be applied for the maintenance of public worship and the support of religion. That the House of Assembly adopted by a majority of 27 to 1, certain amendments to the amended Bill sent down by the Legislative Council affirming the principles of their original Bill.

That during the same session, a despatch from Lord Glenelg, His Majesty's Principal Secretary of State for the Colonies to Lieutenant-Governor Sir Francis Head, was communicated to the House of Assembly in which his Lordship treated the question as one to be settled by the Provincial Legislature, and declined to interfere with the deliberations of the Legislature by offering any suggestions of his own.

That the twelfth Parliament having been dissolved by Sir Francis Head, a general election was held at a period of great excitement, and the question of the disposal of the Clergy Reserves appears to have been lost sight of during the political struggle which ensued. That during the first three sessions of the thirteenth Parliament, various efforts were made to settle the question, but without any satisfactory result. That at length in the course of the third session, a Bill which had passed the Legislative Council providing for the reinvestment of the said Reserves in the Imperial Parliament, was concurred in by a majority of 22 to 21,

That in the year 1839, during the fifth and last session of the last Parliament of Upper Canada, a Message was sent down to the House by the Governor-General, the Right Hon. C. P. Thomson, by which the House was informed, that the Bill passed during the previous session had not received the Royal Assent, there being an insuperable objection to it on a point of form. That his Excellency stated, moreover, that in the opinion of Her Majesty's Government, the Provincial Legislature would bring to the decision of the question an extent of accurate information as to the wants and general opinion of society in this country in which the Imperial Parliament was unavoidably deficient.

That another attempt at settlement was made during the last session of the last Parliament of Upper Canada, when a

Bill passed both Houses providing for the sale and disposal of the Clergy Reserves, which Bill having been reserved for the Royal Assent was not assented to by your Majesty.

That on your Majesty's decision to withhold the Royal Assent from the said Bill, your Majesty's Government submitted to the Imperial Parliament a Bill providing for the sale and distribution of the Proceeds of the Clergy Reserves, which, so far from settling this long-agitated question, has left it to be the subject of renewed and increased public discontent.

And we humbly beg leave further to represent to your Majesty, that apart from the objections entertained by the great majority of your Majesty's subjects in Canada to religious endowments, by which certain favoured denominations of Christians are kept in connexion with the State, and thereby placed in a position of superiority over others, the present disposition of the revenue derived from the Clergy Reserves investments is manifestly unjust.

That the entire revenue derived from the investments made before the passing of the Imperial Act 3 and 4 Victoria, chapter 78, has been thereby assigned to the Churches of England and Scotland, to the exclusion of the Wesleyan, Episcopal, and New Connexion Methodists, the Free Presbyterian Church, the Baptists, Congregationalists, and other religious bodies whose pastors have an equal claim to the designation of a Protestant clergy with those of the clergy of the Churches of England and Scotland.

That it appears from the facts above stated, that during a long period of years, and in nine successive sessions of the Provincial Parliament, the Representatives of the people of Upper Canada, with an unanimity seldom exhibited in a deliberative body, declared their opposition to religious endowments of the character above referred to. That the wishes of the people were thwarted by the Legislative Council, a body containing a majority avowedly favourable to the ascendancy of the Church of England. That the Imperial Government from time to time invited the Provincial Parliament to legislate on the subject of these Reserves, disclaiming on the part of the Crown any desire for the superiority of one or more particular Churches. That your Majesty's Government, in

declining to advise the Royal Assent being given to a Bill passed by a majority of one, for investing the power of disposing of the Reserves in the Imperial Parliament, admitted that from its accurate information as to the wants and general opinions of society (in which the Imperial Parliament was unavoidably deficient), the question would be more satisfactorily settled by the Provincial Legislature. That subsequently to the withholding of the Royal Assent from the last-mentioned Bill, the Imperial Parliament passed an Act disposing of the proceeds of the Clergy Reserves in a manner entirely contrary to the formerly repeatedly expressed wishes of the Upper Canadian people as declared through their Representatives, and acknowledged as such in a message sent to the Provincial Parliament by command of your Majesty's royal predecessor.

That we are humbly of opinion that the legal or constitutional impediments which stood in the way of provincial legislation on this subject, should have been removed by an Act of the Imperial Parliament, but that the appropriation of revenues derived from the investment of the proceeds of the public lands of Canada, by the Imperial Parliament, will never cease to be a source of discontent to your Majesty's loyal subjects in this province; and that when all the circumstances connected with this question are taken into consideration, no religious denomination can be held to have such vested interest in the revenue derived from the proceeds of the said Clergy Reserves, as should prevent further legislation with reference to the disposal of them, but we are nevertheless of opinion that the claims of existing incumbents should be treated in the most liberal manner; and that the most liberal and equitable mode of settling this long-agitated question, would be for the Imperial Parliament to pass an Act providing that the stipends and allowances heretofore assigned and given to the clergy of the Church of England and Scotland, or to any other religious bodies or denominations of Christians in Canada, and to which the faith of the Crown is pledged, shall be secured during the natural lives or incumbencies of the parties now receiving the same, on the same principle that was adopted in the 3rd section of an Act passed in the third and fourth years of Her Majesty's reign, chapter 78; subject to which provision the Provincial

Parliament should be authorized to appropriate as in its wisdom it may think proper, all revenues derived from the present investments, or from those to be made hereafter, whether from the proceeds of future sales or from instalments on those already made.

We therefore humbly pray that your Majesty will be graciously pleased to recommend to Parliament a measure for the repeal of the Imperial Act 3 & 4 Vic., chap. 78, and for enabling the Canadian Legislature to dispose of the proceeds of the Clergy Reserves, subject to the conditions above mentioned.

Lord Elgin has clearly explained the cause of the narrow majority on the principal resolution. In the minority of thirty-four were Mr. Attorney-General Lafontaine and Mr. Receiver-General Viger. The Upper Canada members of the Government all voted in the majority. It may be well to explain here that Mr. Lafontaine went cordially with his colleagues for the repeal of the Imperial Act, but there is great reason to doubt whether the Lafontaine-Baldwin ministry could have agreed to a Bill for settling the Clergy Reserve question. It is worthy of notice that during the various discussions which took place in successive sessions of the Canadian Parliament, in all of which addresses to the Crown on this subject were carried by large majorities, the members of extreme views on both sides made unceasing efforts to extort pledges from the Ministers as to the nature of the measure which they would introduce when in a position to propose legislation. Of course the Ministers refused to make any declarations on the subject, but the consequence was that

distrust was evinced towards them in Upper Canada by the "Clear Grit" section of the Reformers. The adoption of the address settled the question for the time, and a Bill brought in during the same Session for the abolition of the Rectories was abandoned by the introducer. On the 27th January, 1851, Earl Grey addressed a despatch to the Earl of Elgin, announcing that it appeared to Her Majesty's Government to be "impossible for them, consistently with the principles on which they have always held that the Government of Canada ought to be conducted, to advise Her Majesty to refuse to comply with the prayer of the address of the Assembly."

It had been the intention of Earl Grey to have introduced a Bill into Parliament during the Session of 1850-51; but in a despatch, dated 11th January, 1851, he made Lord Elgin acquainted with circumstances under which "Her Majesty's Government are compelled to postpone to another Session the introduction of the Bill." When the Canadian Assembly met in 1851, an address of thanks to Her Majesty for the promise conveyed by Earl Grey's first despatch was proposed and carried. No other action could be taken; but in that same Session the Rectory question was finally disposed of under the following circumstances:—The general feeling among the Reformers of Upper Canada had always been, that the Rectories had not been legally established. The conflicting

opinions of the law advisers of the Crown have been already given, and reference has been made to the protest of the Moderator of the Synod in connexion with the Church of Scotland in 1838. Sir George Arthur had directed the Moderator to be informed that, "if the opinion of the law officers " had been against the legality of the endowments " his Excellency would probably have directed a " proceeding at the suit of the Crown. But Her " Majesty's Government now considering the Act " legal, the burden of instituting the suit is un- " avoidably cast upon those who wish to void the " patents." This was the state of the question when it was brought before the Canadian Parliament in 1851. It had not been contemplated by any member of the Government to take up the Rectory question unless in connexion with that of the Clergy Reserves, and, moreover, it was a most difficult question to deal with. Had the patents been indisputably valid there can be no doubt that there would have been a concurrence of opinion among the Reformers of Upper Canada to permit the existing incumbents to hold the Rectory lands during their incumbencies, on condition of their being afterwards sold with the Clergy Reserves, of which they had originally formed part. But if the patents were invalid (and a member of the Government had obtained an opinion from an English Chancery solicitor that they were), it seemed on the whole most expedient to have

the question referred to the judicial tribunals. This course was calculated to prevent much embarrassment. There was a reasonable hope that it might be the subject of amicable arrangement with the supporters of the claims of the Church, and it would prevent the necessity of making the abolition of the Rectories a Government measure. It was very doubtful whether the Lower Canadian members of the Government could be brought to support any Bill for voiding patents legally granted, and the law advisers of the Crown had given their opinion that the patents in question were legal. Such was the state of opinion in the Government when an independent member introduced a Bill in the Session of 1851 for the repeal of the Rectory clauses in the Act 31 Geo. III. cap. 31. The Bishop of Toronto stated in his letter of 19th March, 1853, to the Duke of Newcastle, that all that the framer of the Bill had in view "was to "destroy the Rectories by dropping the power of "presentation, a fraud which was discovered and "prevented."

No doubt the framer of the Bill had in view precisely the object ascribed to him by the Bishop, and it is not improbable that he would have applied the term "fraud" to the original creation of the Rectories. However, nothing could have been fairer than the course taken by the House of Assembly. The Bill was referred to a Select Committee of five Upper Canada lawyers, two of whom

were members of the Church of Scotland or Free Church, and strongly opposed to the Rectories, two were Conservative members of the Church of England, one of them, Mr. J. Hilyard Cameron, its recognized organ in Parliament. The fifth was Mr. Attorney-General Baldwin, also a member of the Church of England, but the leader of the Reform party. The result of the deliberation of the Committee was a compromise to which the Government and the opposition were parties. The terms of that compromise will appear from the Rectory Act, and from the address to the Governor, pledging the House to make good the expenses of obtaining a legal decision as to the validity of the Rectory patents. The arrangement was not satisfactory to the proposer of the Bill, who seems to have abandoned it to the Chairman of the Select Committee; and it will appear on reference to the Journals of Canada for 1851, that the two Presbyterian members of the Committee opposed the passage of the Bill. Mr. Baldwin was no doubt the means of effecting the compromise, and his colleagues in the Government, and his adherents in the House, supported the Bill which was denounced by the "Clear Grit" party.

COPY of an Act to Repeal so much of the ACT of the PARLIAMENT of *Great Britain*, passed in the Thirty-first Year of the reign of King GEORGE the Third, and Chaptered Thirty-one, as relates to RECTORIES and the Presentation of INCUMBENTS to the same, and for other purposes connected with

such RECTORIES; together with the RESOLUTIONS of the Council and Assembly of *Canada* relative thereto.

WHEREAS the recognition of legal equality among all religious denominations is an admitted principle of colonial legislation: And whereas in the state and condition of this province, to which such a principle is peculiarly applicable, it is desirable that the same should receive the sanction of direct legislative authority, recognizing and declaring the same as a fundamental principle of our civil polity; Be it therefore declared and enacted, by The Queen's most Excellent Majesty, by and with the advice and consent of the Legislative Council and of the Legislative Assembly of the Province of Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of the United Kingdom of Great Britain and Ireland, and intituled, "An Act to re-unite the Provinces of Upper and Lower Canada, and for the Government of Canada," and it is hereby declared and enacted, by the authority of the same, that the free exercise and enjoyment of religious profession and worship, without discrimination, or preference, so as the same be not made an excuse for acts of licentiousness, or a justification of practices inconsistent with the peace and safety of the province, is by the constitution and laws of this province, allowed to all Her Majesty's subjects within the same.

And whereas the provisions of the Act of the Imperial Parliament of Great Britain, passed in the Thirty-first year of the reign of His late Majesty King GEORGE the Third, intituled, "An Act to repeal certain parts of an Act passed in the Fourteenth year of his Majesty's reign, intituled, 'An Act for making more effectual provision for the Government of the Province of Quebec in North America,' and to make further provision for the Government of the said Province," whereby the erection of parsonages or rectories in this province according to the Establishment of the Church of England, the endowment of such parsonages or rectories out of the Clergy Reserves, and the presentation of incumbents or ministers to such parsonages or rectories, is vested in the Government of this province, have been found to give occasion to doubts and

apprehensions which it is desirable should be removed by the repeal of the same, under the power for that purpose vested in the Provincial Parliament by the provisions of the said Imperial Act; Be it therefore enacted, that the thirty-eighth, thirty-ninth and fortieth sections of the said Act shall be and the same are hereby repealed, and that from henceforth no letters patent shall be issued in this province by the Crown, for the erection of any such parsonages or rectories, or for the endowment thereof, out of the Clergy Reserves or the public domain, or for the presentation of any incumbent or minister to any such parsonage or rectory: Provided always, that neither such repeal nor anything herein contained, shall in anywise affect any proceedings heretofore had, whereby certain parsonages or rectories were erected and endowed, or supposed to be erected and endowed by the authority aforesaid, or whereby certain incumbents or ministers were presented or supposed to be presented under the same authority to such parsonages or rectories, or any of them, but the legality or illegality of all such proceedings shall be left open to be adjudicated upon and determined as if this Act had not been passed; and provided also, that nothing herein contained shall extend or be construed to extend to limit, or in any way affect or interfere with the provisions of the twenty-seventh section of the Act of the Parliament of this province passed in the session thereof held in the fourth and fifth years of Her Majesty's reign, intituled, "An Act for the disposal of Public Lands."

And be it enacted, that in the event of its being judicially decided that any of such parsonages or rectories were erected according to law, and until a judicial decision shall be obtained on such question, the right of presenting an incumbent or minister to such parsonage or rectory, shall vest in and be exercised by the Church Society of the Church of England Diocese within which the same shall be situated, or in such other person or persons, bodies politic or corporate, as such Church Society, by any bye-law or bye-laws to be by them from time to time passed for that purpose, shall or may think fit to direct or appoint in that behalf.

Extract from the Journals of Assembly of Canada, 28th July, 1851.

On motion of the Hon. Mr. Hincks, seconded by the Hon. Mr. Price, ordered: That the entries in the Journals of the House of Assembly of the Province of Upper Canada, of the 5th February, 1838, relating to the endowment of certain Rectories, be now read, and the same were read accordingly. The Hon. Mr. Hincks moved, seconded by the Hon. Mr. Price, and the question being put: That an humble address be presented to His Excellency the Governor-General, to acquaint His Excellency that doubts have for many years existed in the public mind as to the legality of the proceedings by which certain rectories or parsonages were from time to time erected and endowed within the late Province of Upper Canada. That in consequence of representations made to Her Majesty's Imperial Government on the subject, the opinion of the law advisers of the Crown was taken by Lord Glenelg, then Principal Secretary of State for the Colonies, in the year 1837, which opinion was given on the 8th June of the same year, to the effect that the erection and endowment of the said rectories were not "valid and lawful acts." That on the 6th July, 1837, a despatch was addressed by Lord Glenelg to Lieutenant-Governor Sir F. B. Head, in which His Lordship states it as his opinion that some method should be found of bringing the question to an adjudication with the least possible delay, inconvenience and expense, and in which he instructs the Lieutenant-Governor to consult with the Bishop and Archdeacon of the Church of England as to the best means of testing the legality of the endowments in an amicable manner. That owing to subsequent representations from the Bishop of Toronto, the law advisers of the Crown were induced to change their opinion, and to declare that the said rectories were legally constituted and erected; that this opinion has not had the effect of quieting the public mind in Upper Canada; and, that in order to set the question finally at rest, this House humbly prays that His Excellency will take immediate steps to bring the question of law fully to adjudication in such a manner as will enable either party to bring the cause by appeal under the

Judicial Committee of the Privy Council, and this House pledges itself to make good all necessary expenses attendant on such proceeding. The House divided; Yeas, 58; Nays, 3.

It may not be uninteresting to notice that during the same session in which the Rectory question was finally settled, the Party Processions Act, which had been passed in the year 1843, was repealed with but slight opposition. There was no division on the 2nd reading, and the 3rd reading was carried by 36 votes to 16. The Solicitor-General for Lower Canada, an Irish Roman Catholic, now Mr. Justice Drummond, spoke and voted for the repeal, and the names of Mr. Cartier, and a considerable number of French Canadian members will be found in the majority.

It may here be convenient to bring the history of the Rectory question to a conclusion. In the following year 1852, the writer, being then leader of the Government, was in England on public business. He directed a case to be prepared in order to obtain the opinions of Mr. Bethell and Mr. Malins as to the validity of the patents.

The case and opinion will put the reader in possession of all essential facts. Several of the enclosures will be found in preceding pages.

CASE.

UNDER the provisions contained in the 38th and 39th *Clauses of the 31st Geo. 3rd*, chap. 31 (A.D. 1791), the King may authorize the Lieutenant-Governor from time to time with the advice of his Executive Council to erect in every

Township in Upper Canada one or more Rectories, to endow them with certain Lands set apart by the statute known as Clergy Reserves, and to present incumbents to the same. These powers remained apparently in abeyance until the 21st *January*, 1836, when the then Lieutenant-Governor Sir John Colborne, on the eve of his departure from the Province, two days before the arrival of his successor *Sir Francis Head*, erected and endowed 57 Rectories in Upper Canada. When their establishment became publicly known, it caused much excitement in the province, and the subject being brought under the notice of the Imperial Parliament, Lord Glenelg, then Secretary for the Colonies, not having authorised or even heard of the proceedings of Sir John Colborne, upon the receipt of a despatch from Sir Francis Head, enclosing the *minutes of Council of the 15th January*, 1836, and doubting the legality of the Act, communicated to the Attorney-General, his Lordship's view of the case and desired the opinion of *the Attorney-General, the King's Advocate and the Solicitor-General*, the establishment of the Rectories being in their *opinion* (8th June, 1837) upon the case submitted, not valid. The case and opinion was transmitted to Sir Francis Head, for the information of the Bishop and Archdeacon, and for the purpose of ascertaining whether any facts had been omitted or inaccurately represented in the case referred to the Attorney-General. Dr. Strachan the Archdeacon of York made a report in reference thereto, and the same being brought under the notice of Lord Glenelg, the matter was again submitted to the same Crown officers, who upon further consideration gave an *opinion dated 28th January*, 1838, on the main points adverse to their former one.

Counsel will observe, that by reference to the case submitted by Lord Glenelg, 12th April 1837, the usual commission to the Governor of the Province, contains the authority which His Majesty was enabled to give under the 31st Geo. 3rd, to establish Rectories, &c., subject to such instructions communicated by one of the modes mentioned in the Governor's Commission as may be given in respect thereof. The Executive Council, under whose advice Sir John Colborne acted, and whose advice was necessary to the validity of the Act, in their

minute of Council dated 15th January, 1836, based their advice and recommendation upon a despatch of Lord Goderich, dated *the 5th April, 1832*; no other authority or signification of His Majesty's pleasure appears to have ever been communicated directly to Sir John Colborne. It is contended that the despatch of 5th April, 1832, was no authority from the King under the 31st Geo. 3rd, or such instructions under the Governor's Commission as would authorize Sir John Colborne to establish the Rectories.

It appears that Lord Bathurst in a *despatch dated 2nd April, 1818*, being then Colonial Secretary, communicated the Prince Regent's Commands to Mr. President Smith, then administrator of Upper Canada, to take the necessary legal measures for constituting Rectories in every township, the endowing of them to be a matter of future consideration. And subsequently Lord Bathurst, in a *despatch dated 22nd July, 1825*, addressed to Sir Peregrine Maitland, then *Lieutenant-Governor of Upper Canada*, communicated His Majesty's (George the Fourth's) commands to erect and endow Rectories, &c., quoting the words of the statute 31 Geo. 3rd. And it is contended that the instructions *contained in these despatches were in full force in 1836*, and legal authority for the Act of Sir John Colborne and his Council.

It does not appear however that when Sir John Colborne acted upon the advice and recommendation of His Council, contained in the minute of *Council of 15th January, 1836*, such advice had any reference to, or that the Council, or His Excellency considered, or were aware of the despatches of Lord Bathurst, or any other authority, except that contained in Lord Goderich's dispatch of *5th April, 1832*. It is contended that the instructions of Lord Bathurst, written in one case 18 and in the other 11 years previous to the minute of Council of 1836, were communicated *for the guidance of Mr. President Smith, and Sir F. Maitland respectively*, and in view of the then existing state of affairs in the Province: between the dates of these despatches, and January 1836, the policy of the Imperial Government was materially changed in reference to ecclesiastical endowments, and the Clergy Reserves set apart under the Act of 1791, and such change of policy was communicated

to Sir John Colborne and His Council in various despatches, particularly in two despatches *each dated the 21st November, 1831*—and such change of policy was also communicated officially to the Provincial Legislature by Sir John Colborne.

It is also contended that if Sir John Colborne or his Council were aware of Lord Bathurst's despatches, it is not unreasonable to suppose that they, viewing the change in the imperial policy which had taken place with regard to the Clergy Reserves and Religious Endowments generally, the determination of, and the instructions from the King's Government in November 1831, considered Lord Bathurst's instructions, if otherwise subsisting, as, in effect, revoked and countermanded, or else they would have referred to them in the minute of Council of January, 1836.

It is a matter for consideration, that when the change in the Imperial Policy was intimated to the Provincial Government by the despatches of 21st November, 1831: Lord Goderich deemed it "*unnecessary*" and "*inconvenient*" to repeal so much of the Act of 1791, as related to erecting and endowing of parsonages, and it may be contended that the change of policy did not affect parsonages or rectories: but Counsel will note, that the policy determined upon was to repeal, *in toto*, the provisions of the Act of 1791, so as to prevent all further appropriations of lands for religious purposes, and to vest all undisposed of lands then before allotted, in His Majesty to become part of the Crown Estate discharged of all trusts on account of the Clergy. By reference to the *38th Clause of 31st Geo. 3rd*, the Rectories thereby authorized to be erected and endowed were to be endowed from the lands so allotted and set apart. And it is contended that as Lord Goderich was aware, that monies, proceeds of the Clergy Reserves, had been previously expended in erecting parsonages, and supposing, as he may have done, that some Rectories had been then erected in Upper Canada, as in fact they were in Lower Canada, and being desirous to retain the power to erect Rectories to be endowed from private or other sources, and the power of presentation, &c. Lord Goderich may, under these circumstances, have considered it "*inconvenient*" to repeal so much of the Act,—and as the reinvesting in the

Crown, all Clergy Lands prevented the endowment of rectories or parsonages, under the provisions of the Act 1791, it would appear unnecessary to repeal the bare authority to erect parsonages, a point merely affecting the domestic polity of the Church of England. It is submitted that these views are strengthened by that portion of the despatch of 21st November, 1831 (No. 56), where Lord Goderich says, "a provincial statute, embracing these provisions, would I apprehend set at rest *all* the questions respecting the Clergy Reserves." Now one of these questions and a very important one, was the erecting and endowing Rectories, and also by the draft of a Bill, sent with that despatch to be laid before the Legislature, containing no reservation respecting the Rectories, but repealing the authority to allot any further lands, and vesting all, previously set apart, in His Majesty by the following Clause.

"And be it, &c, that all the lands heretofore appropriated within this Province for the support and maintenance of a Protestant Clergy now remaining unsold, shall be, and the same are hereby declared to be vested in His Majesty, his heirs, and successors, as of his and their original Estate absolutely discharged from all Trusts for, or for the benefit of a Protestant Clergy, and of and from all and every, the clauses and demands of such Clergy upon or in respect of the same."

It is contended that when His Majesty's Government determined upon the contents of the despatches of the 21st November, 1831, as an effectual means of setting at rest all questions respecting the Clergy Reserves, they could not have intended, that nevertheless Sir John Colborne had authority by virtue of Lord Bathurst's instructions or any other instructions at any time, without further signification of His Majesty's pleasure, to erect and endow one or more Rectories in every township.

The attention of Counsel is desired to the form of the *instrument*, by virtue of which the Rectory is supposed to be erected and endowed: on its face, it appears there was no Rector in case—at the time of its passing the great seal of the Province. It is contended the deed is void, that there was no person or

corporation to whom the fee did or could pass, or any person capable of taking it, that the endowment is void, as being a grant in future, and for uncertainty, that no Rectory or corporation sole was erected.

The *Minute of Council* shews that much difficulty had arisen as to the form of the instrument.

There is no peculiar Law in this Province, different from that of England bearing on the question, except the 29th Clause of the Provincial Act: 4 & 5 *Victoria*, c. 100, passed in September, 1841, and assented to by Her Majesty in Privy Council, 7th April, 1842.

Since 1836 to the present time the legality of the establishment of these Rectories has been the subject of discussion in the province, both in and out of Parliament, and during the last Session of the Provincial Legislature an address to the Crown was passed authorising the Provincial Government to try the validity of the 57 Rectories and their endowments through the legal tribunals. Under these circumstances and with a view of carrying into effect the intention of the Legislature the opinion of Counsel is required.

Counsel will please carefully peruse the documents subsequently copied and noted on the margin.

The questions proposed for the consideration of Counsel are the following:—

First.—Were the instructions of Lord Bathurst to Mr. President Smith, notwithstanding the demise of two monarchs, changes in the Imperial Government, Colonial Secretaries and Governors of the Province—sufficient legal authority or signification of His Majesty's pleasure according to the true intent and meaning of the Act of 1791, to enable Sir John Colborne in 1836 to erect and endow Rectories?

Second.—If answered affirmatively,—Did the change of Policy determined upon by His Majesty's Government in November, 1831, intimated to Sir John Colborne, and acted upon by him, virtually annul or otherwise revoke the instructions of Lord Bathurst?

Third.—If the first question be answered affirmatively, consider it in connection with the minute and advice of the Executive Council of 15th January, 1836, based solely upon

the despatch of Lord Goderich of the 5th April, 1832, are the erection and endowment of the Rectories legal and valid under the same?

Fourth.—Can Lord Goderich's despatch of the 5th April, 1832, be regarded as a signification of His Majesty's pleasure to erect and endow Rectories?

Fifth.—Did the instructions in the Royal Commission to the Governor of the Province, revoke or annul all previous instructions to his predecessors, and were such instructions without any further signification of His Majesty's pleasure, sufficient legal authority to Sir John Colborne under the Act of 1791, to erect and endow Rectories?

Sixth.—Is the instrument erecting and endowing the Rectories void or voidable, or partly so, at law or in Equity, and in what respect?

Seventh.—On the whole case, are you of opinion that the constituting and endowing the 57 Rectories are valid and legal Acts?

No. 1.

Clauses of *Imperial Statute*. 31st George the 3rd, chap. 31.

No. 2.

Copy Minute of Council.

No. 3.

Copy of Case for the Crown Officers.

No. 4.

Opinion of the Crown Officers.

No. 5.

2nd Opinion of Crown Officers.

No. 7.

Copy of a Despatch from LORD GODERICH to Lieutenant Governor Sir JOHN COLBORNE.

No. 8.

Copy of Despatch, Lord BATHURST to President SMITH.

No. 9.

Copy of Despatch from Lord BATHURST to Major-General Sir PEREGRINE MAITLAND.

No. 10.

Extracts of a Despatch, Lord GODERICH to Sir JOHN COLBORNE.

No. 11.

Copy of a Despatch from Lord GODERICH to Sir JOHN COLBORNE.

No. 12.

*Province of Upper Canada.
William the Fourth by the Grace of God, &c.*

No. 13.

Extract from 4 & 5 Vict., cap. 100.

OPINIONS.

“ We have considered this case with the attention its great importance demands. It is unnecessary to answer the several questions in detail, because upon the whole case we are clearly of Opinion that the Acts done by Sir Jno. Colborne for the endowment of the Rectories in question were beyond his authority, are not sustainable by the Instructions given to any preceding Governor, and are therefore inoperative and void.

“ The course proposed of bringing the question for decision before the Courts in Canada by Informations to be filed by the Attorney General will in our Opinion be available, and we recommend that it be adopted.

“ RICHARD BETHELL.

“ RICHD. MALINS.”

Lincoln's Inn, May 18, 1852.

A considerable time elapsed before the case came on for hearing in Upper Canada, and the author, who was then in the West Indies, has never seen the judgment of the Court of Chancery which affirmed the validity of the patents. It seems to have been deemed unnecessary to appeal to

the Judicial Committee of the Privy Council as had been originally contemplated, and the Rectory Act having settled all other points at issue, and having completely disconnected the Government and the Church, all agitation of the question has long since ceased.

About the time that the arrangement was made for the settlement of the Rectory question, some important political events occurred which require notice. The most extreme member of the "Clear Grit" party was Mr. William Lyon Mackenzie, whose name must be familiar to those who have read the "Narrative" of Sir F. B. Head, as the leader of the Upper Canada rebellion.

In the session of 1851, Mr. Mackenzie moved that a Committee be appointed with instructions to report a Bill for the abolition of the Court of Chancery, and for conferring equity powers on the Courts of Common Law. Little more than a year had elapsed since an important change had been made in the constitution of the Court of Chancery with the general concurrence of the profession. Mr. Attorney-General Baldwin had been the framer of the act, and was of course chiefly responsible for it. Mr. Mackenzie was not a member of the legal profession, and was wholly incompetent to deal with such a question. His motion was rejected by a majority of the House, but the members from Upper Canada divided, 24 for the

motion and only 10 against it. The entire Conservative party, including several members of the legal profession, supported Mr. Mackenzie, and Mr. Baldwin had the mortification of finding himself indebted for his majority to the French Canadian supporters of Mr. Lafontaine, whose constituents had no interest in the question, as the jurisdiction of the Court of Chancery was confined to Upper Canada. Mr. Baldwin at once resigned office, and announced his determination to retire from public life. During the eighteen years that have since elapsed, no proposal to abolish the Court of Chancery of Upper Canada has been entertained. About the same time a Select Committee, which had been sitting on the Seigniorial question, of which the Solicitor-General for Lower Canada was Chairman, made a report. There was a great pressure for legislation on the subject, and it was absolutely necessary for the Government to decide as to its course.

The leader of the Government, Mr. Lafontaine, had declined to be a member of the Select Committee, and it was generally believed that his views on the Seigniorial tenure question were much more Conservative than those of his Parliamentary supporters. To what extent he was influenced in his decision to retire from public life at the close of the Session, which was the last Session of the third Parliament, by differences of opinion with his supporters on the Seigniorial and Clergy Re-

serve questions, must be a matter of surmise. He assigned no political reasons for his retirement, but simply stated the decision at which he had arrived. Mr. Price, another member of the Upper Canada section of the Cabinet, had likewise privately intimated to his colleagues his intention to retire at the end of the Parliament. Under the circumstances stated, the Session was brought to a close as speedily as possible, and soon afterwards Lord Elgin called on the writer to advise him on the formation of a new ministry. The result was that negotiations were opened with M. Morin, who had been Speaker of the Assembly in the expiring Parliament. The task was a difficult one. It seemed absolutely necessary to conciliate the Upper Canada "Clear Grits" if that could be done by removing their groundless suspicions. There had never been any difference of opinion on the Clergy Reserve question among the Upper Canada members of the Government, but the time had arrived when it was necessary to come to an understanding with the Lower Canadians; and it was expedient, in order to restore confidence and to secure union, to introduce into the Cabinet one or two gentlemen who had been acting with, and who enjoyed the confidence of the "Clear Grit" members. To this proposition the Lower Canada members had a great repugnance, which was not easily overcome. The result, however, of protracted negotiations was the formation of the Hincks-Morin Ministry,

with a *programme* which included an extensive measure of Parliamentary reform, an Elective Legislative Council, the Secularization of the Clergy Reserves, and the Abolition of the Seigniorial Tenure. Besides these questions, the Great Inter-Colonial Railway, which had originated in Nova Scotia, demanded immediate attention.

The result of the elections was satisfactory, and the New Ministry was soon at work. After protracted negotiations between Canada, Nova Scotia, and New Brunswick, it was agreed that delegates from each province should proceed to England to endeavour to procure the assent of Her Majesty's Government to a modification of the proposed line of Railway to Halifax, which had been made a *sine quâ non* by the New Brunswick Government. The writer sailed for England in March, 1852, and found on his arrival that a change of ministry had taken place, and that Sir John Pakington was Secretary of State for the Colonies. The Government of the Earl of Derby took a very different view of the Clergy Reserve question from that of Lord John Russell, as the following correspondence will show:—

Copy of a Despatch from Sir JOHN S. PAKINGTON, Bart. to the Earl of ELGIN and KINCARDINE.

Downing-street, April 22, 1852.

My Lord,—By a Despatch of my predecessor, Earl Grey, of the 11th July last, you were informed that Her Majesty's then servants found themselves compelled to postpone to another session the introduction into Parliament of a Bill

giving to the Canadian Legislature authority to alter the existing arrangement with regard to the Clergy Reserves.

2. With reference to that intimation, I have now to inform you that it is not the intention of Her Majesty's present advisers to propose such a measure to Parliament this session.

3. They have, in the first place, taken into consideration that, since any opinion upon this difficult subject was expressed by the Legislature of Canada, a general election has taken place in the province, and it is as yet uncertain what the views of the new Assembly as to the disposal of the Clergy Reserves may be.

4. But, independently of that circumstance, Her Majesty's Government feel serious doubts how far they would be able to give their consent and support to an arrangement, the result of which would too probably be the diversion to other purposes of the only public fund, except that devoted to the endowment of the Roman Catholic Church, which now exists for the support of Divine worship and religious instruction in the colony.

5. While it appears to Her Majesty's Government that, under the distribution authorized by the Clergy Reserves Act, 3 & 4 Vict. c. 78, of the proceeds of the sales of the reserved lands, no ground is left for reasonable jealousy or complaint of undue favour to particular religious denominations, they think it may possibly be desirable, on account of the changes which may be effected in the character of the population through extensive immigration or other causes, that the distribution in question should from time to time be reconsidered.

6. Any proposals of such a nature Her Majesty's Government would be willing to entertain ; but they are of opinion that they could only regard any measure which would place it in the power of an accidental majority of the colonial legislature, however small, to divert for ever from its sacred object the fund arising from that portion of the public lands of Canada which, almost from the period of the British conquest of that province, has been set apart for the religious instruction of the people, with the most serious doubt and hesitation how far they should be justified in advising Her Majesty to give Her consent to such an enactment.

7. These views on the part of Her Majesty's Government,

with respect to a proposal so deeply and permanently affecting the interests of Canada, cannot but derive additional strength from the numerous petitions, having many thousand signatures, which have been addressed both to the Queen and to the Parliament of the United Kingdom, praying that the existing Act relating to the Clergy Reserves may continue in force.—I have, &c.

(Signed) JOHN S. PAKINGTON.

Governor the Right Hon.
The Earl of Elgin and Kincardine,
&c. &c. &c.

*Copy of a Letter from F. HINCKS, Esq., to the Right Honourable
Sir JOHN S. PAKINGTON, Bart.*

Morley's Hotel, London, May 3, 1852.

Sir,—I have the honour to enclose a copy of an approved Report of the Committee of the Executive Council of Canada, dated the 7th ultimo, which I received by the last mail. I have learned through the medium of the public journals, that Her Majesty's Government has determined to take no action in the question of the clergy reserves during the present session of Parliament; and however much I may regret that decision, I am well aware that, under the circumstances, it is irrevocable. I have already had an opportunity of urging, during the interview with which you were good enough to honour me, the importance of settling this long vexed question as speedily as possible. It was my duty to state that the number of those who insist on the present settlement is very small, and I may now add, that one of the leading opposition newspapers in Upper Canada, and in the interest of the Church of England, has come out distinctly for a new scheme of distribution. I would press on Her Majesty's Government more formally what I have already urged in my conversation with you, that if, as has been alleged, the present Canadian Parliament is favourable to the views of the Church of England, it is surely the best time for that church to procure a settlement that will be regarded as constitutional. I can assure Her Majesty's Government with the utmost sincerity, that there will be no

end to agitation in Canada if the attempt be made to settle this question permanently according to the public opinion of England instead of that of the province itself; and I may add, that it is well known that many who are opponents of the secularization of the Clergy Reserves are on constitutional grounds in favour of a settlement by the Provincial Parliament. I believe that after the assurance given by the late Government, it will be found impossible to protract very long the repeal of the Imperial Act; and I have no hesitation in affirming that no interests will suffer more by delay than those of the Church of England. If Her Majesty's Government desire, before determining on their line of action on this question, to ascertain the views of the present Canadian Parliament, I would respectfully beg to be informed of their decision.

I have, &c.

(Signed)

FRANCIS HINCKS.

Sir J. S. Pakington, Bart.

&c. &c. &c.

Enclosure.

Extract from a Report of a Committee of the Honourable the Executive Council on Matters of State, daied 7th April, 1852, approved by his Excellency the Governor-General in Council on the same day.

The Committee have had under consideration the memorandum of the President of the Committee of Council on the propriety of instructing the Honourable the Inspector-General to ascertain the views of Her Majesty's Government on the subject of a repeal of the Imperial Act 3 & 4 Vict. c. 78, in conformity with the addresses to Her most Gracious Majesty, from both branches of the Canadian Legislature at its last session, on the subject of the Clergy Reserves.

The assurances of Her Majesty's late Government that such action would be taken, had prepared the people of Canada to expect that no further delay would take place in meeting their just wishes upon a question of such paramount importance to them; the Committee, therefore, recommend that their colleague, the Inspector-General, while in England, be requested by the provincial secretary to seek an interview with Her

Majesty's Ministers, and represent to them the importance of carrying out the pledges of their predecessors on the subject of the Clergy Reserves, and thus empower the colonial legislature to deal with the question in accordance with the well-understood wishes of the people of Canada.

Certified.

(Signed)

WM. H. LEE.

The Hon. the Provincial Secretary,
&c. &c. &c.

Copy of a Letter from the Earl of DESART to F. HINCKS, Esq.
Downing Street, May 7, 1852.

Sir,—I am directed by Secretary Sir John Pakington to acknowledge your letter of the 3d instant, transmitting an extract from an approved Report of a Committee of the Executive Council of Canada, dated 7th April, instructing you to represent to Her Majesty's Ministers the importance of carrying out the pledges of their predecessors on the subject of the Clergy Reserves.

Sir J. Pakington desires me to inform you, that until the receipt of your communication he was not aware of the existence of the Report of which you now send him a copy, Lord Elgin not having as yet transmitted it to this department. Being thus without any information that you were officially instructed to communicate with Her Majesty's Government on that particular subject, Sir J. Pakington did not think it necessary to announce to you their determination upon it, as he unquestionably would have done if he had been aware that your mission to this country was connected with it. I am now directed by Sir J. Pakington to enclose to you a copy of the despatch which he addressed to Lord Elgin on the 22d ultimo, communicating the decision of Her Majesty's Government.

I have, &c.

F. Hincks, Esq.

(Signed) DESART.

Copy of a Letter from F. HINCKS, Esq., to the Right Honourable
Sir JOHN S. PAKINGTON, Bart.

Morley's Hotel, London, May 10, 1852.

Sir,—I have the honour to acknowledge the receipt of a

letter from the Earl of Desart, dated the 7th instant, enclosing a copy of your despatch to Governor-General the Earl of Elgin and Kincardine, dated the 22d ultimo, communicating the decision of Her Majesty's Government on the subject of the Canada Clergy Reserves, and I have to express my grateful acknowledgments therefor. It is probable that, as the approved Report of the Committee of the Executive Council of Canada was sent to me for the purpose of being delivered to Her Majesty's Government, it was deemed unnecessary by his Excellency the Governor-General to transmit another copy; but you will, I think, find on inquiry, that his Excellency has communicated to you a copy of a memorandum agreed to at a meeting of the members of the Council on the 25th February, prior to my departure, by which I was instructed "to press upon the consideration of Her Majesty's Government the importance of procuring the assent of the Imperial Parliament, as soon as possible, to a Bill for repealing the Imperial Act, 3 & 4 Vict. c. 78, providing for the sale of the Clergy Reserves in Canada, and for the distribution of the proceeds thereof, as prayed for by addresses from both houses of the provincial Parliament, and for authorizing the provincial Parliament to legislate on the subject of those Reserves."

I trust that the existence of these instructions, followed up as they have been by the approved Report of Council, which I had the honour to transmit in my letter of the 3d instant, will be a sufficient apology for my offering some remarks on your despatch of the 22d ultimo, which shall be made in a spirit of the highest respect to Her Majesty's Government. Had the addresses from the two houses of the Canadian Legislature prayed for any particular distribution of the income arising from the Clergy Reserve Fund, there most unquestionably would have been grave objections to any Imperial action to be founded on the opinions of a Parliament which had ceased to exist. But I would respectfully urge, that there can be no reasonable ground for doubt, that the great majority of the people of Canada desire that this question, which is one of local interest, should be disposed of by their own Parliament. I need not, however, press this point further, because I am well aware that legislation during the present session of the Imperial Par-

liament is now out of the question, and that before any further action could be taken by Her Majesty's Government, the new Canadian Parliament will have had an opportunity of expressing its views on the subject. But I am bound by a sense of duty to Her Majesty to express to Her confidential advisers, that it is with the most serious alarm that I have read the concluding portion of your despatch. Most devotedly attached as I am to the maintenance of the subsisting connexion between the mother country and the British American colonies, I cannot view without grave apprehension the prospect of collision between Her Majesty's Government and the Parliament of Canada, on a question regarding which such strong feelings prevail among the great mass of the population. Such a difficulty is the more to be regretted, because the question of the Clergy Reserves is the only one, so far as I am aware, at all likely to lead to collision. It happens, most unfortunately, that public opinion in England differs very widely from that in Canada, on questions at all partaking of a religious character; and as the people of Canada are convinced that they are better judges than any parties in England can be of what measures will best conduce to the peace and welfare of the province, Her Majesty's Government will, I trust, perceive that the danger which I apprehend is at least deserving of the most grave consideration. I cannot have the slightest doubt that the members of Her Majesty's Government are actuated by the most earnest desire to promote the best interests of Canada, and that if they could be brought to believe that I have given a faithful account of the state of public opinion there, they would be disposed to yield their own wishes for the sake of the peace of the colony. I am quite ready to acknowledge the high respectability of the petitioners against the repeal of the Clergy Reserves Act. The bishops, clergy, and an influential portion of the laity of the Church of England, the clergy and a portion of the laity of the Church of Scotland, are doubtless in favour of the present settlement, which, indeed, confers on the Church of Scotland an income wholly beyond its requirements in Canada; while the majority of the Presbyterian population neither receive any share of the endowment, nor desire to participate in it. While, however, I admit the respectability of the peti-

tioners, I think that I am justified in affirming that they do not represent anything like a majority of the population of Canada; indeed, the very fact that they on all occasions endeavour to accomplish their wishes by appealing, not to their own representatives in Parliament, but to the Imperial Parliament, is conclusive proof that they are themselves conscious that their views are not in accordance with public opinion in Canada. I forbear from entering into the consideration of the probable action of the Canadian Legislature on the Clergy Reserves question, because I am anxious to impress on Her Majesty's Government that, although there may be wide differences of opinion among the opponents of the present arrangement as to the best mode of settling the question, a vast majority of the people are agreed as to the necessity of its being effected by provincial legislation; and I am aware that some of the best friends of the Church of England question the soundness of the policy which has influenced the promoters of the petitions lately presented to Parliament to look for support to their views in England, instead of using their legitimate influence over public opinion in Canada. I do not by any means desire to conceal from Her Majesty's Government that, saving always the rights of existing incumbents, a very strong feeling prevails, especially in Upper Canada, in favour of the secularization of the Clergy Reserves; but I ought not to omit reminding them that, although it is true that the portion of public lands known as Clergy Reserves was set apart for the religious instruction of the people at a very early period, and when there were very few inhabitants in the colony, it is likewise true that power was expressly given to the provincial legislature "to vary or repeal" the clauses in the Act 31 Geo. 3., setting apart these lands; that successive Houses of Assembly remonstrated against giving effect to them, and that so firmly were the advisers of His late Majesty King William the Fourth impressed with the necessity of getting rid of this most perplexing question, that Secretary Viscount Goderich, in a despatch dated 21st November 1831, communicated the Royal instructions that a Bill, framed in England, should be submitted to the provincial Legislature, for the purpose of getting rid entirely of the endowment. The people of Canada

know well the cause of the failure in carrying out the gracious intentions of His late Majesty, as well as their own repeatedly expressed wishes. The opinions of the mass of the people have never wavered during the last twenty-five years, although circumstances have from time to time induced them to pause in their efforts, in order to concentrate public opinion on questions more deeply affecting their constitutional rights. I cannot, therefore, conceive that any action which the Canadian Parliament may take of the nature referred to in the despatch, could be correctly designated as the result of an accidental majority. All the great questions which have been settled in England during the last fifty years might be said with equal justice to have been carried by accidental majorities ; and if a supposition on the part of Her Majesty's Government that any majority in the Canadian Parliament expressing views antagonistic to their own was an accidental one, were deemed a sufficient ground for resisting that majority, I would most respectfully submit that there would be no security whatever for constitutional government. I am well convinced that Her Majesty's advisers have every disposition to attach due weight to the clearly expressed opinion of the people of Canada, and I am therefore anxious to remind them of, and to urge upon their consideration the past history of the Clergy Reserves question, which I have endeavoured to glance at as briefly as possible. There is a passage in the despatch to the Earl of Elgin which seems to me calculated to lead to some misconception. I refer to the paragraph describing the Clergy Reserves as the only "public fund, except that devoted to the endowment of the Roman Catholic Church." I am not aware that any public fund has ever been devoted to the endowment of the Roman Catholic Church in Canada. Whatever property may be in the possession of Roman Catholics has been obtained principally by private donation or bequest, although in some cases there were additional grants from the French Crown, which were secured to the possessors at the conquest. These grants were made to communities consisting of ecclesiastics or religious ladies, either for charitable or educational purposes, or for the conversion of the Indians. If I am correct in this statement, as I believe that I am, I most respectfully submit that such

grants as those to which I have referred bear no analogy to the Clergy Reserves, and can scarcely be considered as a public fund devoted to the endowment of the Roman Catholic Church. I should not discharge my duty to Her Majesty's Government were I not to state to them with perfect frankness my views on another paragraph in the despatch. I refer to that in which it is intimated that Her Majesty's Government would be willing to entertain a proposal for reconsidering the mode of distributing the income of the Clergy Reserves. I have no hesitation in stating it as my conviction that the Canadian Parliament will not invite the legislation of the Imperial Parliament regarding the distribution of a local fund. Any such proposition would be received as one for the violation of the most sacred constitutional rights of the people. I am therefore fully convinced that the future action of the Canadian Parliament will be essentially of the same character with that which has been already taken. I can assure you, Sir, that it is with deep regret that I find myself compelled by a sense of public duty to urge upon you views which I fear will not meet the approbation of Her Majesty's Government; but I trust that I have succeeded in doing so in a respectful manner; and I feel assured that they will receive the consideration which the importance of the subject demands, and that Her Majesty's advisers will be guided in their final decision by what they believe to be for the best interests of Canada.

I have, &c.

(Signed) FRANCIS HINCKS.

Sir J. S. Pakington, Bart.,
&c. &c. &c.

*Copy of a Letter from the Earl of DESART to FRANCIS
HINCKS, Esq.*

Downing Street, May 17, 1852.

Sir,—I am directed by Secretary Sir John Pakington to acknowledge your letter of the 10th of this month, on the subject of the decision of Her Majesty's Government as to the Clergy Reserves question, and to thank you for the representations which you have made to them on this and other subjects affect-

ing the views and interests of the people of Canada, on which they are fully sensible of the value of your opinion.

2. I am to add that Sir John Pakington has not been able to find in the records of this department any trace of the memorandum agreed to by the Executive Council on the 25th February last, to which your letter refers, having been communicated to his predecessor or himself.

I have, &c.

F. Hincks, Esq.

(Signed) DESART.

During the ensuing session of the Canadian Parliament, it became the duty of the writer to move the following series of resolutions.

1. That whatever differences of opinion may exist among the people of Canada as to the best mode of disposing of the revenues derived from lands known as Clergy Reserves, the great mass of the people will ever maintain the principle recognized by the Right Honourable the Earl Grey, then Her Majesty's Principal Secretary of State for the Colonies, in his Despatch of 27th January 1851, to the Right Honourable the Earl of Elgin and Kincardine, that the question whether the existing arrangement "is to be maintained or altered is one so exclusively affecting the people of Canada, that its decision ought not to be withdrawn from the Provincial Legislature, to which it properly belongs to regulate all matters concerning the domestic interest of the province."

2. That while the people of Canada are devotedly attached to Her Majesty's person and Government, and most anxious to maintain inviolate the connexion which binds them to the great empire over which she rules, yet this House is bound by a high sense of duty to inform Her Majesty, that the refusal on the part of the Imperial Parliament to comply with the just demand of the representatives of the Canadian people on a matter exclusively affecting their own interests, will be viewed as a violation of their constitutional rights, and will lead to deep and wide-spread dissatisfaction among Her Majesty's Canadian subjects.

3. That this House is well aware that attempts have been

made to induce Her Majesty's Imperial Ministers to believe that the present representatives of the people of Canada entertain opinions on the subject of the repeal of the Clergy Reserves Act different from those expressed by the late Parliament.

4. That this House confidently hopes, that when Her Majesty's Ministers shall be convinced that the opinions of the people of Canada and of their representatives on this subject are unaltered and unalterable, they will consent to give effect to the promise made by their predecessors; and this House is confirmed in this hope by the suggestion in the despatch of the Right Honourable Sir John Pakington, that Her Majesty's Ministers are prepared to recommend amendments to the Imperial Clergy Reserves Act, with a view to satisfy the wishes of the Canadian people.

5. That this House can scarcely doubt that, the principle of amending the present Act being admitted, Her Majesty's Ministers will yield to the strong feeling which pervades the Canadian people, that any new legislative enactments regarding the Clergy Reserves should be framed by their own representatives, instead of by the Imperial Parliament, which, being necessarily unacquainted with the state of public opinion in Canada, cannot be expected to concur in a measure that will give permanent satisfaction to its inhabitants.

6. That this House desires to assure Her Majesty, that in thus giving expression to the public opinion of the country, it is actuated by the strongest feelings of loyalty to Her Majesty, and by a sincere desire to prevent those lamentable consequences which must be the result of a collision between the Imperial and Provincial Parliaments, on a question on which very strong feelings are known to prevail among the people of this province.

The Address founded on the above resolutions was received in England very shortly before the resignation of the Earl of Derby; but a draft despatch, which had been prepared by Sir John Pakington for transmission by the mail, 16th De-

ember, 1853, was laid before Parliament, and as Sir John moved for its production, justice to him requires its insertion here.

Draft of a Despatch from Sir JOHN S. PAKINGTON to Governor-General the Earl of ELGIN, prepared for transmission by mail of 16th December, 1852.

Downing Street, December 1852.

My Lord, --I have had the honour to receive your Lordship's despatch,* No. 85, of the 22nd September, forwarding an address to the Queen from the Commons of Canada, in Provincial Parliament assembled, on the subject of the Clergy Reserves.

2. I have laid this Address before Her Majesty, who was pleased to receive it very graciously.

3. It is with sincere regret that Her Majesty's Government feel themselves unable to advise Her Majesty to comply with the wishes of the Assembly, for the introduction of a Bill into the Imperial Parliament, to repeal the Act 3 and 4 Vict. c. 78.

4. In arriving reluctantly at this conclusion, Her Majesty's advisers disclaim any intention of "violating the constitutional rights" of the Canadian Parliament. On the contrary, they regard those rights with the high respect which is justly due to them, and they fully and distinctly recognize both the justice and the propriety of the general rule that in those dependencies of the British Crown, which enjoy the advantages of representative institutions, questions which affect exclusively local interests, should be decided and dealt with by the Local Government and Legislature.

5. But Her Majesty's Government are not less clearly of opinion that the question of the repeal of the Imperial Act 3 and 4 Vict. c. 78, involves interests, and is connected with circumstances, which make it fairly an exception to this general rule.

* Page 7 of Papers relative to "Clergy Reserves, Canada," presented to both Houses of Parliament, by command of Her Majesty, 11th February, 1853.

6. It is the earnest desire of Her Majesty's Government, not only to avoid any serious "difference of opinion" with the Legislature of Canada, but to act with them, if possible, in friendly concert, upon a subject of such great and enduring importance to the Canadian people, especially of the Upper Provinces.

7. Her Majesty's Government desire to call the attention of the Commons of Canada to the circumstances under which the Imperial Act was passed.

8. After a long period of agitation, and frequent attempts at legislation on the part of the Upper Canadian Assembly, an Act was passed by the Parliament of that Province for placing the disposal of the Clergy Reserves in the hands of the Imperial Parliament. This Act was not confirmed, for reasons stated in Lord John Russell's despatch to Lord Sydenham of the 7th February, 1839. Another Act, providing for the sale and disposal of the Clergy Reserves, was subsequently passed by the Provincial Legislature. This Act would have received the Royal Assent, but for a legal objection which was found to be insuperable.

9. In consequence of the legal difficulty to the confirmation by the Crown of the Provincial Act, the Act 3 and 4 Vict. c. 78, similar in principle, though differing in detail from the Act sent from Canada, was passed by the Imperial Parliament.

10. Her Majesty's Government cannot fail to remember that not only was the Imperial Act similar in principle to the Provincial Act, but that the former was passed and regarded at the same time, both in Canada and this country, as a final settlement of a long agitated and most difficult question; and the settlement of which had moreover been pressed upon the Imperial Government by successive Governors of the Canadian Provinces, and by the general wish of the Canadian people.

11. Her Majesty's Government would further remind the House of Assembly that the generally admitted necessity of permanently settling this long debated question, had reference, not only to the manifest evils of prolonged agitation, but also to the circumstances under which the reunion of the two Provinces of Canada was then about to take place.

12. It was held, and in the opinion of her Majesty's Go-

vernment it was wisely held, to be of paramount importance, that a permanent settlement of the Clergy Reserve question should precede the Act of reunion.

13. In considering, therefore, how far it is right or expedient to reopen this question, it is impossible for Her Majesty's advisers to overlook the fact, that since it has been decided, the two Provinces, with a population for the most part distinct both in race and religion, have been united under one representative Government.

14. Her Majesty's advisers have pleasure in expressing their high sense of the loyalty and good feeling of the French Canadian population of the Eastern Province. They have the satisfaction of believing that friendly feeling between the French and British population is steadily and constantly increasing; and they would deprecate, in the most earnest manner, any course of action on the part of the Provincial Parliament, which might have the least tendency to interrupt those amicable relations which now so happily subsist between the two races.

15. The French population of the Lower Province enjoy the blessing of an exemplary, a well educated, and a numerous priesthood, with ample endowments for the support of the priests, and for the maintenance of exclusive educational institutions.

16. From the period of the conquest of Canada till the present day, these endowments have been scrupulously respected.

17. Her Majesty's Government have no disposition to question the right or to impugn the motives of such of the representatives of the French population of the Eastern Province in the Canadian Parliament, as may deem it their duty to vote, either for the repeal of the Clergy Reserve Act, or for the secularization of the Clergy Reserves. But they feel a deep interest in the peace and welfare of all classes of Her Majesty's subjects in Canada, and with past struggles and contentions fresh in their recollection, they would earnestly press on the consideration of the Canadian Parliament, in no unfriendly spirit, whether there would not be danger of reviving feelings of animosity and discontent if the British inhabitants of the Upper Province were deprived by the Imperial Parliament of that fund for the sup-

port of Protestant worship which they have so long enjoyed, and which is now, whether for general or for missionary purposes, more than ever necessary.

18. I cannot thus communicate the views of Her Majesty's Government with respect to the Address of the House of Assembly which I have now to acknowledge, without repeating, in the most distinct terms, that nothing would be more painful to Her Majesty's advisers, or more at variance with their real feelings, than to be involved in any difference, or controversy with the Parliament of Canada, and that their only wish upon this difficult subject is to co-operate with the provincial authorities in promoting the permanent interests of all classes of Her Majesty's Canadian subjects.—I have, &c.

JOHN S. PAKINGTON.

It seems unnecessary to insert the Duke of Newcastle's despatch of 15th January, 1853, announcing the decision of the new Ministry to propose the repeal of the Imperial Act of 1840, which was successfully accomplished. Meantime the Canadian Ministry had carried their measure for the increase of representatives. And it is to be observed that by one of the provisions of the Union Act, two-thirds of the members of both Houses were required to be in their places, to vote for the second and third readings of the Bill.

Even this difficulty (and that it was a most serious one every Parliamentary whip would readily admit) was overcome, and the Bill became law. The Ministry had then to consider whether it would be proper to bring such questions as the Clergy Reserves and Seignorial Tenures, before a House of Assembly, which had by a majority of two-thirds declared its own incompetency.

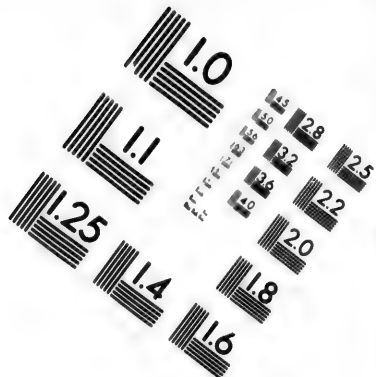
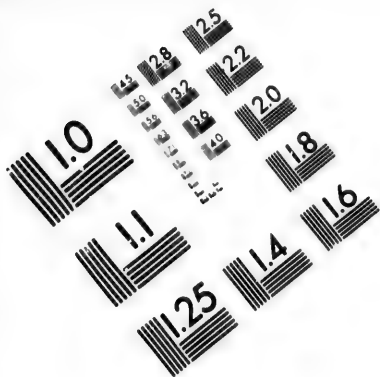
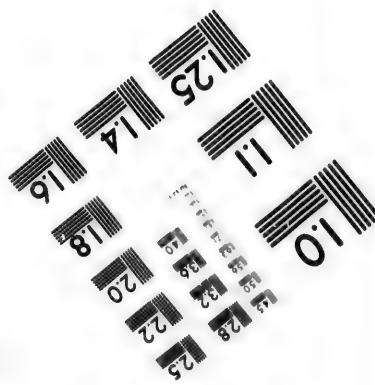
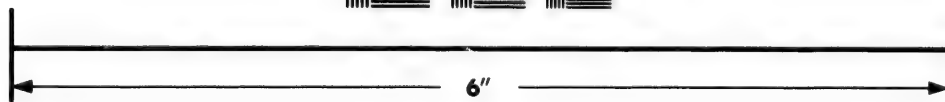
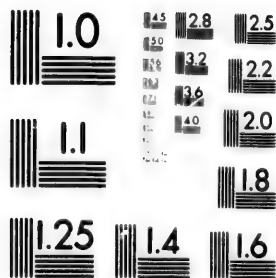


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The decision of the Ministry, which was most fully concurred in by Lord Elgin, was not to propose legislation in the expiring Parliament; but there was some business of an urgent nature, particularly a Bill for giving effect to the Reciprocity treaty, that it was deemed advisable to dispose of before the dissolution. The House met in 1854, shortly after Lord Elgin's return from Washington, to which place he had been accompanied by the writer, as the representative of Canadian interests, during the negotiation of the treaty.

It soon became apparent that there would be an attempt to carry an amendment to the address in answer to the Governor-General's speech, in which the Conservatives, Clear Grits, and Rouges, could concur.

The following despatch from the Earl of Elgin to the Duke of Newcastle, contains a clear statement of the circumstances which led to a dissolution of the Canadian Parliament in 1854.

*Copy of a Despatch from Governor-General the EARL of ELGIN
and KINCARDINE to the DUKE of NEWCASTLE.*

Government House, Quebec, June 22, 1854.

My Lord Duke,—I have the honour to enclose herewith the copy of a speech which I delivered from the throne this day in proroguing the Parliament of the province, and I beg at the same time to solicit your Grace's attention, while I state as succinctly as I can the grounds on which I formed the resolution which has given occasion for the delivery of this speech.

2. It may probably be in your Grace's recollection, that during the course of the last session of the Provincial Parliament, two Acts were passed, which had for their object to

effect very material changes in the constitution of the popular branch of the Provincial Legislature. The former of these Acts raised the number of parliamentary representatives from 84 to 130. This addition to the House of Assembly being so effected as to equalize to a greater extent, than is now the case, population and representation. By the terms of the Constitutional Act, an Act of this nature could not become Law, unless it received in each branch of the Legislature, on the second and third readings, the support of at least two-thirds of the members. In the passage of this Act through the Provincial Parliament these conditions were complied with, and having received a notification of this fact by addresses in the mode prescribed by the Constitutional Act, I assented to it in Her Majesty's name on the 14th June, 1853.

3. The second of the Acts to which I have referred was entitled, "An Act to extend the Elective Franchise, and " better to define the Qualifications of Voters in certain " Electoral Divisions, by providing a system for the registration " of Voters," and the intentions of the Act, as stated in the title, were duly carried out in its provisions.

4. While these proceedings were taking place in the Provincial Parliament, the Imperial Parliament passed an Act repealing the Imperial Statute which had regulated, since the year 1840, the distribution of the fund commonly known as the Clergy Reserve Fund of Canada, and leaving the future application of this fund, as a matter of local concern, to the determination of the local Legislature. This important statute having been duly sanctioned by Her Majesty, reached me shortly before the prorogation of the Provincial Parliament.

5. The course which the Provincial Government ought to take at this juncture, whether in reference to the measures of constitutional change which had been enacted by the local Parliament, or the Act respecting the Clergy Reserves which the Imperial Legislature had passed, became necessarily at an early period of the recess the subject of deliberation in the Provincial Cabinet. Some members of this body were strongly pledged to the secularization of the reserves, and it was believed that a proposal to carry out a measure of this description would be supported by a majority in the existing Assembly.

After full consideration and discussion, however, my Executive Council arrived unanimously at the conclusion, that apart altogether from the merits of secularization, it would not be consistent with their duty to undertake to legislate upon this subject in the Parliament as then constituted. The Clergy Reserve question was one on which it was notorious that the public mind in Upper Canada, more especially, was much divided, and the Imperial statute on the subject had been repealed for the express purpose of facilitating a settlement which should be final, and in accordance with the deliberate views and convictions of the people of the province. To attempt, therefore, to settle such a question in a Parliament which had been already declared by its own vote to be an imperfect representation of the people, and by the exercise of what might be deemed the influence of the Government, was a course of proceeding obviously open to serious objection. In these views of the Executive Council I entirely concurred.

6. An immediate dissolution of Parliament was apparently the readiest mode of escape from the perplexities to which I have referred. But here, again, a difficulty presented itself. In order to give time for the completion of the system of registration which formed part of the measure, the 1st day of January, 1855, had been fixed as the period at which the Act for extending the franchise should come into operation. To give it effect at an earlier time further legislation was required. It was, therefore, finally resolved by the Government that the then subsisting Parliament should be allowed to meet again for the purpose of legislating on this and other necessary matters, preparatory to a dissolution, after which the opinion of the Legislature, as constituted under the extended Representation and Franchise Acts, might be taken on those important questions, the settlement of which was anxiously desired by the people of the province.

7. In accordance with this determination, in my speech from the throne which I transmitted to your Grace by the last mail, with my Despatch No. 5, of the 15th instant, I recommended the passing of a law for bringing into early operation the Act of the preceding session which had extended the elective franchise, in order that a constitutional expression of opinion might be

obtained as speedily as possible under the system of representation recently established, on the various important questions on which legislation was required, and I invited legislation in the then existing Parliament on two other subjects only; the one of these subjects being the Reciprocity Treaty, to give effect to which it was desirable that an Act of the Provincial Parliament should be passed without delay; and the other the Tariff, in which the prosperous condition of the revenue justified certain reductions.

8. The first amendment to the address was moved by the Honourable Mr. Sheppard, a leading member of the Conservative party, who objected to the late period at which the Parliament had been convened. The explanations on this head, however, were deemed sufficient by the majority of the Assembly, and the amendment was accordingly rejected by 40 votes to 29. Mr. Cauchon, a French Canadian Member, then moved, that at the end of the fourth paragraph of the address in answer to the speech delivered at the opening of the session, the following words should be inserted:—"That this House sees with regret that his Excellency's Government do not intend to submit to the Legislature during the present session a Bill for the immediate settlement of the Seigniorial question;" to which amendment, Mr. Hartman, an Upper Canada Member, of the Liberal party, moved as an amendment, to leave out all the words after "House," and add the following instead thereof:—"Regret that his Excellency has not been advised to recommend during the present session a measure for the secularization of the Clergy Reserves, and also a measure for the abolition of the Seigniorial tenure." The Ministerial and Conservative parties concurred in opposing this motion, which was accordingly defeated by a majority of 54 votes to 16. Mr. Sicotte, another French Canadian Member, then moved that the words, "Or one for the immediate settlement of the Clergy Reserves," should be carried to the end of Mr. Cauchon's amendment, and this motion was carried by 42 votes against 29; the Conservative Members availing themselves of the ambiguity of the word "settlement," to join the party who were censuring the administration for not having

introduced during the then session a Bill for secularizing the Clergy Reserves.

9. It will be obvious to your Grace, from the above statement of facts, that a most embarrassing situation was created by this vote. It pledged the then subsisting Parliament to settle the question of the Clergy Reserves, and it was carried by a combination of parties holding opposite views with respect to the terms on which the settlement should be effected. It was my decided opinion that no measure on this subject short of a measure of entire secularization could possibly have been carried through that House of Assembly, with the prospect, more especially, of an immediate dissolution hanging over the heads of its members. Against a measure of secularization carried under such circumstances the friends of religious endowments would, I conceived, have had good cause to complain. But if, on the other hand, out of the heterogeneous elements of which the majority was composed, I had been able to form a Conservative Administration, and with the aid of that Administration to pass a measure for perpetuating the endowment, I felt confident that in place of settling this vexed question, I should by so doing only have given the signal for renewed and more violent agitation. The advocates of secularization would never have admitted the permanency of a settlement effected by a Parliament so peculiarly circumstanced, and the Ministerial party might reasonably have been expected to assert in opposition the views on this subject for which they had incurred the sacrifice of office. Moreover, the position of the House of Assembly itself, in reference to the point which had been raised, was an anomalous one. On the issue, whether or not it was seemly that a certain class of questions should be dealt with before the dissolution, which would bring into operation a more perfect system of popular representation, that body might be said to be a party to the suit. Its verdict, therefore, in the particular case, could hardly be held to carry with it the authority which, under ordinary circumstances, would attach to the decision of the popular branch of the Legislature. It is further to be observed, that the Legislative Council, by the terms of their address in reply to the speech from the throne which I transmitted in my Despatch No. 5, of the 15th

instant, had virtually expressed their approval of the policy adopted by the Administration.

10. Under these circumstances, when the Members of the Executive Council informed me that they were prepared to ask the judgment of the country on the policy of the postponement of the Clergy Reserve and Seignorial Tenure questions, which they had adopted with my full approval and sanction, I did not think that I should be justified in refusing to act on the advice tendered by them, and to dissolve Parliament for this purpose; and having obtained from the Law Officers of the Crown a joint opinion in favour of the legality of the course recommended to me, I summoned the House of Assembly to the Council Chamber in the usual manner, and delivered the speech, of which the copy is herewith enclosed.—I have, &c.

(Signed)

ELGIN AND KINCARDINE.

The Duke of Newcastle, &c. &c.

Enclosure in No. 2.

Honourable Gentlemen of the Legislative Council.

Gentlemen of the Legislative Assembly.

When I met you at the commencement of the present session, I expressed the hope that you would proceed without delay to pass such a law in reference to the period appointed for introducing the amended franchise, as would have enabled me to bring at once into operation those important measures affecting the representation of the people in Parliament, which were adopted by you with singular unanimity last session. Having been disappointed in this expectation, I still consider that it is due to the people of the province, and most respectful to the decision of the Legislature, that I should take such steps as are in my power to give effect to the law by which the Parliamentary representation of the people is augmented, before calling the attention of Parliament to questions on which the public mind has been long agitated, and the settlement of which it is most desirable to effect in such a manner as will be most likely to secure for it the confidence of the people.

I have come, therefore, to meet you on the present occasion for the purpose of proroguing this Parliament with a view to an immediate dissolution.

The rupture between that section of the Reformers, which supported the Ministry, and the "Clear Grits" and "Rouges," was at length complete; but the former laboured under a great disadvantage in Upper Canada as compared with their allies in Lower Canada. In the French Canadian Counties there were no Conservative candidates. The contests therefore were between Ministerialists and Rouges. In Upper Canada there were very few contests between Ministerialists and Clear Grits. The contests were between Conservatives and Reformers, and when any of the latter were "Clear Grits," they got the support of the Ministerialist party. Whereas when the reform candidate was a Ministerialist, no effort was spared by the "Clear Grit" organs to secure the return of the Conservative candidate. An extract or two from a speech delivered by the writer on the occasion of his resignation in 1854, will serve to explain the course taken by the "Clear Grit" party.

"That honourable gentleman who cries, hear, hear (Mr. Mackenzie), threatened over and over again during the last Session, as honourable gentlemen must well recollect, that he would turn me out of the county of Oxford. He told the House again and again that it was through his influence that I sat as the member for the county of Oxford. The honourable member came up to the county of Oxford, with which I had been connected for

" many years; he came to my meetings, he ad-
 " vanced all his charges, he spoke for hours on
 " various occasions, he circulated all kinds of
 " handbills, *Message* extras, *Globe* extras, *Examiner*
 " extras, *North American* extras, and how many
 " votes did his candidate get?* Why just 23,
 " and I was elected by a majority of above
 " 350 over the Conservative candidate, a larger
 " majority than I had ever received before. . .
 " . . . In common with the whole Canadian public
 " I noticed with astonishment the course pursued
 " by Mr. Brown, the leading opponent of the
 " Government on the Liberal side. That gentle-
 " man distinctly avowed his conviction that the
 " Conservative party had abandoned opposition to
 " the secularization of the Clergy Reserves. He in
 " almost every instance supported candidates who
 " had previously been identified with the Conserva-
 " tive party in opposition to Reformers, and espe-
 " cially in the city of Hamilton he supported Sir
 " Allan Macnab against Mr. Buchanan. He
 " assured the country that the Conservatives would
 " settle the Clergy Reserve question by devoting
 " the fund to secular purposes, an assertion little
 " credited at the time, but which is about to be
 " realized."

The result of the general election of 1854, was

* This was one of the few cases in which the "Clear Grits" attempted to aid the Conservatives by setting up a candidate to divide the Reform votes.

to give a majority against the Government in Upper Canada, and a considerable majority in its favour in Lower Canada. It had always been considered most desirable that the Ministry should be supported by a majority from both sections of the province. The Conservative Government formed by Lord Metcalfe, and which was supported by a very small majority during the second Parliament, had been constantly attacked for legislating for Lower Canada by the aid of an Upper Canada majority. The Lower Canada members would have been very unwilling to place themselves in the same position, and it was fortunate that the combined opposition in the third Parliament had a small majority. The first division was on the Speakership; the Ministerial candidate being Mr. Cartier (now Sir George Cartier, Bart.), who is so favourably known in England. The Conservatives did not put forward a candidate, but were pledged to support the nominee of the "Clear Grits." The Lower Canada opposition had a candidate of their own, a French Canadian of moderate views, and on the defeat of Mr. Cartier by a small majority, that gentleman was elected by the aid of the Government. It being clear that a vote of want of confidence would be carried as an amendment to the address in answer to the Governor-General's speech, it appeared very desirable to prevent, by an immediate resignation, the irritating discussion which would have certainly taken place had such

a motion been made. The Ministry having been defeated on a question of privilege, tendered their resignation; and Sir Allan Macnab was immediately sent for by Lord Elgin, and undertook to form an administration. Sir Allan Macnab acted with great tact on the occasion. He offered the Attorney-Generalship of Upper Canada to Mr. John A. Macdonald (now Sir John A. Macdonald, K.C.B.), who was one of the most liberal of the Conservative members, and then made overtures to Mr. Morin. That gentleman was not disposed to form any coalition unless with the concurrence of his former colleagues, and with an assurance that the contemplated measures for settling the Clergy Reserves and Seigniorial questions would be adopted by the new Ministry. The Conservative leaders had fully made up their minds to accept the measures of their predecessors, and they were aware of the great importance of securing for the Government the support of a majority of the Upper Canada members. Sir Allan Macnab, having ascertained Mr. Morin's views, opened a negotiation with the writer, the result of which was, that two of the Upper Canada supporters of the late Government became members of the new Ministry, with an assurance that it would have the cordial support of the writer and all over whom he had influence. A coalition Government was accordingly formed, and as very few of the Reformers went over to the "Clear Grits," it had

the support of a considerable majority in both sections of the province.

The Reform member who accepted office was of course denounced as a traitor, but the "Clear Grits" were unable to prevent his re-election. Perhaps the most beneficial result of the coalition Government was the extinction of the British party in Lower Canada. That party had from the period of the Union been allied to the Conservatives of Upper Canada, and of course when the coalition took place, it gave its support to the new Government. When opportunity offered, gentlemen belonging to that party were taken into the Government, and the French Canadian majority has ever since acted in perfect concert with the representatives of their old antagonists. Little remains to be told of the Clergy Reserves. It has been shown that at the general election many of the Conservative candidates gave pledges to support secularization. Even the Bishop of Toronto abandoned hope after the passage of the Imperial Act. His last manifesto was dated 19th March, 1853, and was addressed to the Duke of Newcastle. An extract or two may be interesting.

"Power and violence are to determine the question; vested rights and the claims of justice are impediments to be swept away. Hence the spoliation sought to be perpetrated by the legislature of Canada has no parallel in colonial history. Even in the midst of the American revolu-

tion, the old colonists during the heart-burnings
 "and ravages of civil war respected the Ecclesiastical Endowments made by the Crown against
 "which they were contending."

"How very different would the religious aspect
 "of Canada have been, had the Roman Catholics
 "done their duty. And it would have been their
 "safety as well as ours had they, instead of joining the enemies of religion, made a common cause
 "with the Churches of England and Scotland in
 "the preservation of Church property and separate
 "schools. Harmony and peace would have prevailed through the whole province, and the
 "socialists and infidels would have sunk into
 "insignificance before so powerful a combination."

* * * * *

"I feel bitterly, my Lord Duke, on this subject.
 "Till I heard of your Grace's despatch, I had fondly
 "trusted in Mr. Gladstone and his friends, of whom
 "you are one, notwithstanding the present doubtful administration, and I still argued in my heart,
 "though not without misgivings, that the Church
 "was safe. I have cherished her with my best
 "energies for more than half a century in this distant corner of God's dominions; and after many
 "trials and difficulties I was beholding her with
 "joy, enlarging her tent, lengthening her cords,
 "and strengthening her stakes, but now this joy is
 "turned into grief and sadness, for darkness and
 "tribulation are approaching to arrest her on-

“ward progress. Permit me in conclusion, my Lord Duke, to entreat your forgiveness if in the anguish of my spirit I have been too bold, for it is far from my wish or intention to give personal offence. And of this, rest assured, that I would most willingly avert, with the sacrifice of my life, the calamities which the passing of your Bill will bring upon the Church in Canada.”

When, on the passing of the Imperial Act Colonial legislation became inevitable, the indefatigable Bishop determined to try what could be done with the Canadian ministry. Accordingly he selected delegates to communicate on the subject with the Government.

One of these gentlemen is well known to many of the English and Irish Prelates, as he was afterwards sent as a delegate to this country. This was the Rev. Dr. Mc.Murray, and with him the writer had most satisfactory communications when considering the details of the Clergy Reserve measure. It was then that the proposal to capitalize the life interests was first entertained. That concession went far to reconcile the friends of the Church to the scheme. It may be proper to observe that the Government had at one time intended to grant terminable annuities, and had obtained authority from Parliament to do so. Tables had been compiled by Mr. Finlaison, the eminent actuary, based on interest at 6 per cent., that being the legal rate in Canada. It would have been

most unjust to the Clergy to have adopted a lower rate. The Roman Catholics and the Wesleyan Methodists were in the receipt of fixed sums, and it was considered right to allow them their annuities for a term of twenty years. Such were the main provisions of the measure agreed upon by the Hincks-Morin Ministry, with the concurrence of the Earl of Elgin, who had the satisfaction of giving his assent to the Clergy Reserve and Seigniorial Tenure Bills before his departure for Canada. In Sir Edmund Head's speech at the close of the Session he thus referred to the settlement of the two great questions:—

“An Act assented to by my predecessor has
 “ finally settled the long pending dispute with
 “ regard to the Clergy Reserves, and it has done
 “ so in such a manner as to vindicate liberal prin-
 “ ciples, whilst it treats the rights of individuals
 “ with just and considerate regard. The same
 “ may, I trust, be said of another most important
 “ law, the Act for the Abolition of the Seigniorial
 “ Tenure. Great changes cannot be made without
 “ some hardships, but Canada will appear in his-
 “ tory as the only country in the world in which
 “ the feudal system has expired without violence
 “ and revolution.”

It has been the study of the writer to avoid injurious reflections on the individuals who took part in the transactions referred to in the preceding pages. Every one must admire the devotion of

the Bishop of Toronto to the interests of the Church, of which he was so long the main support. He survived the controversy for many years, and must have rejoiced that all his apprehensions were groundless and that the influence of the Church was largely extended after the dissolution of its connection with the State.

The circumstances under which Sir John Colborne established Rectories in Upper Canada, though faithfully narrated, may lead the reader to suppose that he acted with culpable precipitation on that occasion. It is only just to observe that there cannot be a doubt that Sir John Colborne believed that Lord Goderich's dispatch gave him the necessary authority to establish Rectories, a measure that he had been contemplating for several years. He had had, however, many obstacles to overcome in order to obtain land in suitable places. As early as June 1835 he required the Crown lawyers to prepare an instrument for constituting the rectories. The Attorney and Solicitor General differed in opinion as to the form, and the consequence was that no action was taken until the close of the year. There can be no doubt that Sir John Colborne felt that it would be unfair to his successor to embarrass him by leaving matters in an incomplete state, and that having proceeded to such lengths, he was bound to assume the entire responsibility of the act.

Looking at the question from his Lordship's

point of view, there is much to excuse in a proceeding which certainly raised the indignation of the people of Canada, when without any warning they learned that a large number of Rectories had been established and endowed.

It may be proper to state in conclusion, that in consequence of the reference made to the Canadian Rectory question in the recent debate in the House of Commons on the Irish Church, the writer was frequently applied to for information by acquaintances who were aware that he had taken a prominent part in the settlement of that question. Those who take the trouble of reading this pamphlet will probably admit the difficulty of answering such inquiries satisfactorily in conversation. The object of the writer has been simply to give a faithful narrative of transactions, in which few now living were so much concerned as himself.

THE END.

